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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0579; Airspace Docket No. 11–AEA–14]

Amendment of Class D and E Airspace and Revocation of Class E Airspace; Manassas, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace areas and removes Class E airspace designated as an extension at Manassas Regional Airport/Harry P. Davis Field, Manassas, VA. A Standard Instrument Approach Procedure has been cancelled. Therefore modification to the airspace areas is required for the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also notes the name change of the airport.

DATES: Effective date: 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On July 1, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D and Class E surface airspace and remove Class E airspace designated as an extension at Manassas Regional Airport/Harry P. Davis Field (76 FR 38581). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Also, the airport name change was inadvertently omitted in the NPRM, and is correctly noted in this rule. Class D and E airspace designations are published in paragraphs 5000, 6002, and 6004, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D and E surface airspace at Manassas Regional Airport/Harry P. Davis Field, Manassas, VA. Airspace reconfiguration is necessary due to the cancellation of the VOR approach into the airport. Class E airspace designated as an extension to Class D airspace is no longer needed and is, therefore, removed. This action also notes the airport's name change from Manassas Municipal Airport/Harry P. Davis Airport to Manassas Regional Airport/Harry P. Davis Field. This action enhances the safety and management of IFR operations at the airport.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 Class D and E airspace at Manassas Regional Airport/Harry P. Davis Field, Manassas, VA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AEA VA D Manassas, VA [Amended]

Manassas Regional Airport/Harry P. Davis Field, VA
(Lat. 38°43′17″ N., long. 77°30′56″ W.)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 5-mile radius of the Manassas Regional Airport/Harry P. Davis Field, excluding that airspace within the Washington Tri-Area Class B airspace area. 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 6002 Class E airspace designated as surface areas.

* * * * *

AEA VA E2 Manassas, VA [Amended]

Manassas Regional Airport/Harry P. Davis Field, VA
(Lat. 38°43′17″ N., long. 77°30′56″ W.)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 5-mile radius of the Manassas Regional Airport/Harry P. Davis Field, excluding that airspace within the Washington Tri-Area Class B airspace area. This Class E 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 6004 Class E airspace designated as an Extension to a Class D surface area.

* * * * *

AEA VA E4 Manassas, VA [Removed]

Issued in College Park, Georgia, on September 19, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24692 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0375; Airspace Docket No. 11–AEA–9]

Establishment of Class E Airspace; Gordonsville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Gordonsville, VA, to accommodate the new Standard Instrument Approach Procedures serving Gordonsville Municipal Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On July 25, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Gordonsville, VA (76 FR 44287). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of an editorial change, this rule is the same as that proposed in the NPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Gordonsville, VA, to provide the controlled airspace required to support the new RNAV GPS standard instrument approach procedures developed for Gordonsville Municipal Airport. This action is necessary for the safety and management of IFR operations at the airport.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Gordonsville Municipal Airport, Gordonsville, VA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA VA E5 Gordonsville, VA [New]

Gordonsville Municipal Airport, VA
(Lat. 38°09′22″ N., long. 78°09′57″ W.)

That airspace extending upward from 700 feet above the surface within a 9.7-mile radius of the Gordonsville Municipal Airport.

Issued in College Park, Georgia, on September 19, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24665 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0558; Airspace Docket No. 11–AEA–13]

Establishment of Class E Airspace; Lebanon, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lebanon, PA, to accommodate new Standard Instrument Approach Procedures that have been developed for Keller Brothers Airport. This action also corrects a typographic error in the latitude coordinates of the airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On July 5, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace 700 feet above the surface, at Lebanon, PA (76 FR 39038). Subsequent to publication, the FAA found that the geographic coordinates needed to be adjusted. This action makes that adjustment. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Keller Brothers Airport, Lebanon, PA. The geographic coordinates of the airport also are being adjusted to coincide with the FAAs aeronautical database. This enhances the safety and management of IFR operations at the airport.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 Class E airspace at Keller Brothers Airport, Lebanon, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment:

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Lebanon, PA [New]

Keller Brothers Airport
(Lat. 40°17′30″ N., long. 76°19′43″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Keller Brothers Airport.

Issued in College Park, Georgia, on September 19, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24690 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2009–C–0543]

Listing of Color Additives Exempt From Certification; Reactive Blue 69; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 6, 2011, for the final rule that appeared in the **Federal Register** of May 4, 2011 (76 FR 25234). The final rule amended the color additive regulations to provide for the safe use of disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulphonatophenyl]amino]-9,10-dihydro-9,10-dioxoanthracene-2-sulphonate (CAS Reg. No. 70209–99–3), also known as Reactive Blue 69, as a color additive in contact lenses.

DATES: *The effective date confirmed:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Raphael A. Davy, Center for Food Safety

and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1272.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 4, 2011 (76 FR 25234), FDA amended the color additive regulations to add 21 CFR 73.3129 to provide for the safe use of disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulphonatophenyl]amino]-9,10-dihydro-9,10-dioxoanthracene-2-sulphonate (CAS Reg. No. 70209–99–3), also known as Reactive Blue 69, as a color additive in contact lenses.

FDA gave interested persons until June 3, 2011, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of May 4, 2011, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, notice is given that no objections or requests for a hearing were filed in response to the May 4, 2011, final rule. Accordingly, the amendments issued thereby became effective June 6, 2011.

Dated: September 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24795 Filed 9–26–11; 8:45 am]

BILLING CODE 4160–01–P

POSTAL SERVICE

39 CFR Part 111

Intelligent Mail Package Barcode (IMpb) Implementation for Commercial Parcels

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) throughout various sections to require the use of an Intelligent Mail unique tracking barcode on all commercial parcels, except Standard Mail® parcels, claiming presort or destination entry pricing; to encourage use of IMpb unique tracking barcodes by providing end-to-end tracking including confirmation of delivery on all commercial parcels except Standard Mail and Package Services parcels; and to require the use of an IMpb on parcels bearing PC Postage®.

DATES: *Effective date:* January 22, 2012. The Postal Service will initially implement the standards referenced in this final rule on January 22, 2012, and will provide an optional-use transitional period for specific requirements until July 2, 2012. The Postal Service finalizes its implementation effective January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Juliaann Hess at 202–268–7663 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is enhancing its operational capability to track commercial parcels by scanning IMpbs and other extra services barcodes with automated processing equipment and Intelligent Mail scanning devices. Once all of the changes described in this final rule are fully implemented, tracking data, that includes acceptance, enroute, and delivery status data, will be available to commercial mailers who use extra services on their packages.

Mailers using IMpb will receive piece-level visibility throughout USPS® processing and delivery operations. New IMpb enhancements include:

- Incorporation of a routing code to facilitate the processing of packages on automated sorting equipment.
- Use of a channel-specific Application Identifier (AI) that associates the barcode to the payment method, supporting revenue assurance.
- A 3-digit service type code, which will identify the mail class and extra service combination and eliminate the need for multiple barcodes on a package.
- The use of either a 6-digit or 9-digit numeric Mailer ID (MID), to accommodate all mailers.
- Inclusion of specific ''mail class only'' service type codes that may be used for packages without extra services.

To promote the use of IMpb or other unique tracking barcodes, effective January 22, 2012 the Postal Service will provide end-to-end tracking, including confirmation of delivery, at no additional charge on all commercial parcels (except Standard Mail and Package Services parcels). Merchandise Return Service (MRS) parcels and Business Reply Mail® (BRM) parcels will also qualify for end-to-end tracking, including confirmation of delivery, at no extra charge.

Also effective January 22, 2012, the Postal Service will require the use of a unique tracking barcode on all commercial parcels, except Standard Mail parcels, claiming presort or destination entry pricing; and will require all parcels shipped using PC Postage systems to bear an IMpb and to use version 1.6 of the electronic shipping services manifest files. The PC Postage requirement does not extend to users of PC Postage stamp products. The Postal Service considers these postage imprints to be in the same category as the imprints generated by postage meter systems.

To allow commercial parcel and PC Postage mailers sufficient time to effect the necessary changes to their software and systems, the Postal Service will provide a transitional period, until July 2, 2012, during which the failure to comply with these new standards will not be penalized.

On January 7, 2013, the Postal Service finalizes the implementation of this final rule by requiring an Intelligent Mail package barcode (IMpb) for all commercial mailpieces that include a tracking or extra service barcode and on all parcels (except Standard Mail parcels) claiming presort or destination entry pricing. This January 7, 2013 IMpb requirement also applies to all domestic Express Mail® pieces, except those paying postage through an Express Mail corporate account (EMCA). In addition, the Postal Service will require the use of version 1.6 electronic shipping services manifest files and require that these files include each destination ZIP + 4® code, or each destination delivery address by January 7, 2013. This new file format will also require a new version of the customer extract file.

The Postal Service recognizes that some mailers may have difficulty preparing their systems and processes in time to meet January 22, 2012 implementation (required after July 2, 2012), and further recognizes that some mailers may be unable to meet the January 7, 2013 deadline for use of IMpb and the version 1.6 electronic manifest file. Therefore the Postal Service will provide limited exceptions for those mailers who may require additional time to finalize their transition to the use of unique tracking barcodes or IMpb. Mailers requiring an exception may direct their request to vice president, Product Information, USPS Headquarters, Room 3667, 475 L'Enfant Plaza, SW., Washington, DC 20260–5626.

The Postal Service will provide no charge end-to-end tracking, including confirmation of delivery, for all Parcel Select mailpieces (including the Parcel

Select barcoded nonpresort category). Since all nondestination entry and nonpresorted Parcel Select mailpieces are currently required to bear barcodes, this Parcel Select category will also be required to bear a unique tracking barcode no later than July 2, 2012, and will be required to bear an IMpb and to use version 1.6 of the electronic shipping services manifest files no later than January 7, 2013.

To support future sorting efficiencies, the USPS strongly encourages mailers to place a ZIP+4 code or destination address in the electronic files for each mailpiece as soon as possible. Mailers using the IMpb are also encouraged to include the additional two-digit delivery point code in the electronic file.

This final rule also requires a postal routing code on all parcels and all Express Mail pieces (except for EMCA mailers), preferably as a concatenated IMpb or extra service barcode. When a concatenated IMpb or extra service barcode is not used, a separate postal routing barcode must be included in addition to the IMpb. Flat-shaped or letter-shaped Priority Mail® or Critical Mail™ pieces may use an Intelligent Mail barcode (IMb™) or POSTNET™ code for the Postal routing barcode. Otherwise, an IMb will not be permitted in lieu of the IMpb.

Mailers of commercial parcels, who claim presort or destination entry pricing, but who do not purchase a trackable extra service, or make use of the no-fee end-to-end tracking, must use a ''mail-class only'' IMpb service type code that represents the class or subclass of the mailpiece that is being shipped.

Service Banners

Beginning January 22, 2012, the Postal Service requires the use of new generic human-readable service banner text formats when printing an IMpb. Current standards require a different human-readable service banner text for each extra service selected by the mailer. The Postal Service will provide two generic text options for service banners, when used with an IMpb, for most of the extra services selected. Mailers must use a ''USPS® Tracking #'' human-readable service banner text above the barcode on packages not requiring a signature at delivery, and a ''USPS Signature Tracking #'' service banner text above the barcode on packages where a signature is required at delivery. These new service banner texts will not be used with Certified Mail®, Registered Mail™, Adult Signature service, Parcel Return Service, or Express Mail or Priority Mail Open and Distribute services. With these exceptions, mailers may also optionally use the new service banner texts in conjunction with all current USPS-approved extra service barcodes. These new texts will simplify IMpb use for mailers and will more accurately describe future processing and tracking capabilities inherent to the IMpb.

The Postal Service is also providing an exception process, for mailers of small First-Class Mail® and Standard Mail parcels lacking sufficient label space to apply an IMpb or extra service barcode meeting the ¾-inch height requirement, to submit barcodes of at least ½ inch in height for USPS testing and approval. These exceptions will be administered by the National Customer Service Center (NCSC), as part of the normal barcode approval process.

Background

On September 17, 2010, the Postal Service published an advance notice of proposed rulemaking in the **Federal Register** (75 FR 56922–56923), announcing plans to provide interim IMpb optional-use standards and to require IMpb use for all commercial mailers at a later date.

The IMpb optional-use standards were announced via *Postal Bulletin* 22297, dated November 4, 2010, incorporated into the DMM, and were available for mailer use beginning November 1, 2010.

On April 28, 2011, the Postal Service published a proposed rule in the **Federal Register** (75 FR 23749–23755) to provide its proposal for future IMpb implementation. The Postal Service received comments in response to this proposed rule, which are summarized later in this notice.

Descriptions of IMpb and Electronic Documentation

For the purposes of this final rule, the term ''commercially shipped package'' is generally used to describe all domestic mailpieces meeting parcel characteristics, all Express Mail and Priority Mail mailpieces, regardless of shape, including commercially shipped flat-rate items. It does not include EMCA pieces, Critical Mail pieces, some Priority Mail flat-size pieces prepared by high-volume mailers, or Package Service parcels mailed at USPS retail counters. The term ''commercially shipped package'' will also encompass Parcel Post® pieces, within the Package Services category, bearing a permit imprint.

Piece-level information will allow the Postal Service to improve its competitiveness within the commercial package shipping industry and to create a more comprehensive service performance measurement tool. Barcodes are not currently required on commercially shipped packages, except those entered under an Electronic Verification System (eVS®); and many barcodes now being used are unable to incorporate the data necessary to meet the future needs of the Postal Service. At present, commercially shipped packages can bear barcodes that are designed to provide delivery status information only, and do not always include a routing code (a barcode that represents the destination ZIP Code™). These barcodes allow limited integration of multiple extra services and have limited revenue protection capabilities, due to the absence of information associating the piece with its specific payment method.

The IMpb provides unique piece-level data to enable the Postal Service to increase efficiency, enhance package visibility and tracking capabilities, and provide a means to measure service performance. The IMpb is a width-modulated barcode containing up to 34 digits, which generally follows the specifications of the GS1–128 symbology. GS1–128 barcodes are a special type of Code 128 barcodes, which make use of Application Identifiers (AI) to define the encoded data and their use. The IMpb leverages features of the GS1–128 symbology to allow for the unique identification and tracking of domestic packages from induction to delivery. The GS1–128 barcode symbology is already a requirement for users of electronic confirmation services and eVS. Customers participating in these programs will not need to change the symbology of the barcode; however the elements within the barcode and layout will change.

There are several IMpb barcode variations for commercial and retail use that provide sufficient flexibility to accommodate the diverse mailing needs of customers. To improve routing, tracking, and service capabilities, mailers will be required to include the correct 5-digit routing code in the barcode on each commercially shipped package, either incorporated into a single concatenated barcode or as a separate postal routing barcode. The Postal Service will also require mailers to transmit the ZIP + 4 code information to the USPS via an electronic file. As an alternative mailers may include the destination address in the electronic file instead of the ZIP + 4 code.

Mailers who generate their own barcoded labels will benefit from the enhancements to the electronic files, allowing the support of the additional

features incorporated into the IMpb. The new version 1.6 electronic file format includes expanded package identification code fields to accommodate up to a 34-digit barcode string, and requires fewer file types to support various combinations of products and services. With the full implementation of this final rule, mailers will be required to include the destination ZIP + 4 code (or destination address) in the electronic file for all records. This additional ZIP Code information will assist in the routing and tracking of our package products. An optional field for the delivery point code of the destination address has been added to the electronic file to provide additional information to improve service. A listing of electronic file formats is located in the addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code,* available on the RIBBS® Web site at *http://ribbs.usps.gov.* File formats are also provided in the newly released, Publication 199, Implementation Guide to *Intelligent Mail Package Barcode (IMpb) for Confirmation Services and Electronic Verification System (eVS) Mailers.* Publication 199 is also available on the RIBBS Web site, and includes all information in the Publication 91 Addendum, but is more comprehensive. The Postal Service currently provides IMpb technical specifications in both publications, but expects to eliminate the Publication 91 Addendum at some point in the near future.

The data construct of the IMpb barcode differs from that of the current confirmation services barcode. The IMpb uses unique 3-digit service type codes to identify the exact product and extra service combinations, eliminating the need for separate barcodes and enabling more efficient package handling and delivery. Detailed specifications for IMpb barcodes are available in the ''Barcode Data'' section of the specification document, *Barcode, Package, Intelligent Mail (USPS2000508)* on RIBBS. A list of the 3-digit service type codes is available in Publication 199 and the addendum to Publication 91. Technical specifications may be modified using an alternative approval process authorized by the vice president, Product Information.

Mailers using IMpb can optionally increase package visibility by associating each package with the appropriate sack, or an approved equivalent container, which bears an accurately encoded Intelligent Mail tray label. Each sack or approved alternate container may then be electronically associated to a pallet (or equivalent container) that bears an accurately encoded Intelligent Mail container placard.

The Postal Service also plans to assist Merchandise Return Service (MRS) and Business Reply Mail (BRM) parcel mailers in developing processes capable of generating unique tracking barcodes for their labels, and to replace the nonbarcoded labels many currently use. The use of unique tracking barcodes will be optional for these mailers, but when used, these mailpieces will qualify for end-to-end tracking, including confirmation of delivery, at no additional charge.

The Postal Service has proposed creating two products from its existing Standard Mail parcels/not flat-machinable (NFMs) product. The two products proposed would be Standard Mail Fulfillment parcels and Standard Mail Marketing parcels. The Postal Service has also proposed to transfer all of its Standard Mail Fulfillment parcels (except nonprofit) to its competitive product line, where they would become a subcategory of the Parcel Select product. The Postal Service has obtained approval for this transfer, conditional on the January 22, 2012 price change. If this transfer occurs as planned those transferred parcels would become eligible for end-to-end tracking, including confirmation of delivery, at no cost, would be required to bear a unique tracking barcode no later than July 2, 2012; and would be required to bear an IMpb and to use version 1.6 of the electronic shipping services manifest files no later than January 7, 2013.

Comments

The Postal Service received three comments in response to the April 28, 2011 proposed rule, with some commenters addressing more than one issue. These comments are summarized as follows:

In general, commenters expressed support for the Postal Service's efforts to enhance its operational capability to track commercial parcels. Commenters were also generally in support of the proposal to provide end-to-end tracking, including confirmation of delivery, at no charge and a standardized service banner text.

Comment: One commenter recommends that the ZIP + 4 barcode construct be supported as an option for IMpb, prior to the implementation date, in order to assist mailers in meeting the January 7, 2013 requirement to place the ZIP + 4 code in the electronic shipping services manifest files.

Response: The ZIP + 4 barcode construct is currently supported and customers may use this construct to comply with the ZIP + 4 code requirement. However, the readability for this barcode is not yet optimal on our passive scanners and mechanized parcel sorters. For this reason the USPS encourages mailers to use available constructs that do not include the ZIP + 4 code. When using a barcode construct that includes the ZIP + 4 code, mailers shipping small packages must also ensure sufficient label space exists to print a longer barcode that meets specifications.

Comment: A commenter requested clarification on how the ZIP + 4 code requirement pertains to the Parcel Return Service (PRS) manifest. This commenter requests an explicit statement as to whether the ZIP + 4 code requirement would apply to PRS.

Response: The ZIP + 4 code requirement will not apply to PRS and will not be required in PRS manifests or the barcodes on PRS pieces. PRS pieces have a different processing model than other parcels. PRS pieces are addressed to unique ZIP Codes and are picked up at participating Post Offices, plants, or Network Distribution Centers.

Comment: Another commenter wished to confirm his understanding that mailers will have to provide the ZIP + 4 code or destination delivery address in the electronic shipping services manifest files by June 3, 2013 to obtain destination entry or presort pricing.

Response: This commenter is correct; mailers will be required to include the ZIP + 4 code or destination delivery address in the electronic manifest file to be eligible for destination entry or presort pricing. However, the effective date for this requirement has been changed to January 7, 2013.

Comment: A commenter asserted that full IMpb implementation cannot occur until the ''Shipping Partner Events'' are supported by the USPS product tracking system (PTS).

Response: The Postal Service understands the importance of supporting IMpb in the Shipping Partner Event files. On June 30, 2011, modifications were made to accommodate IMpb in the current version of the Shipping Partner Event file. To fully support IMpb, a new version of the Shipping Partner Event file and the corresponding Error/Warning file was implemented on August 28, 2011.

Comment: A commenter encouraged the USPS to enable version 1.6 of the electronic shipping services manifest files to accept legacy barcodes, because this would provide mailers an

opportunity to work through transition issues prior to the implementation date.

Response: The Postal Service agrees and has received similar feedback from other mailers. In response, the Postal Service modified its systems on June 26, 2011 to accept the current USPS-approved barcode formats in the new electronic shipping services manifest files version 1.6.

Comment: Another commenter asked if mailers could obtain destination entry or presort pricing by using an IMpb and providing version 1.6 of the electronic shipping services manifest files, but without including the ZIP + 4 code or destination delivery address in the manifest.

Response: Until January 7, 2013, mailers who apply an IMpb, or a unique tracking barcode or extra services barcode to their parcels are eligible for destination entry or presort pricing. Mailers are not required to provide the ZIP + 4 code in the electronic file until January 7, 2013.

Comment: A commenter requested a summary of the changes required by January 22, 2012, and those required by June 4, 2012.

Response: On January 22, 2012, mailers will be required to apply a tracking or extra services barcode on all Parcel Select parcels and all other commercially shipped parcels (except Standard Mail) in order to receive presort or destination-entry pricing. Either an IMpb or one of the current USPS-approved unique tracking or extra services barcodes will fulfill this requirement. Mailers who are unable to modify their systems to apply tracking or extra services barcodes to their mailpieces will continue to receive presort or destination-entry pricing for parcels without barcodes until July 2, 2012. Effective July 2, 2012, the transition period for mailers to modify their systems will be over. To continue to receive Parcel Select or presort or destination-entry pricing, mailers must apply unique tracking or extra services barcodes to their parcels. Beginning on January 22, 2012, mailers using a PC Postage system must apply an IMpb to their parcels, use version 1.6 of the electronic shipping services manifest files, and include each destination ZIP + 4 code, or each destination delivery address in the file. To allow PC Postage mailers sufficient time to effect the necessary changes to their software and systems, the Postal Service will also provide an optional-use transitional period until July 2, 2012.

Comment: Another commenter asked if mailers are required to make any changes by June 3, 2013 if they are willing to forgo destination entry or presort pricing.

Response: Mailers (except mailers of Parcel Select parcels) who are willing to forgo presort or destination entry pricing will not be required to apply an IMpb to their parcels or use electronic shipping services manifest files version 1.6, even after January 7, 2013. All Parcel Select mailers will be required to use IMpb and version 1.6 of the electronic shipping services manifest file by January 7, 2013.

Comment: A commenter asked what type of barcode qualifies for Delivery Confirmation service at no charge as of January 22, 2012, and if mailers will be able to use the current USPS-approved Delivery Confirmation barcodes, with 2-digit Service Type IDs and unique serial numbers until June 3, 2013.

Response: All IMpb and unique tracking or Extra Services barcodes will qualify for end-to-end tracking, including confirmation of delivery, at no charge on all commercially shipped parcels (excluding Standard Mail and Package Services parcels) beginning on January 22, 2012. This includes parcels bearing the current USPS-approved barcodes with 2-digit service type codes and serial numbers that remain unique for 6 months. Mailers may use the current USPS-approved barcodes until January 7, 2013 to meet the barcode requirements to qualify for presort or destination entry pricing.

Comment: A commenter asked if electronic shipping services manifest files, for mailers using unique tracking barcodes, will be required on commercial parcels before June 3, 2013.

Response: To receive end-to-end tracking, including confirmation of delivery, at no charge, commercially shipped parcels bearing non-IMpb unique tracking barcodes or extra services barcodes must use either Version 1.3 or 1.4 of the electronic shipping services manifest files, or the new Version 1.6 file (or version 1.5 for existing customers using only this format). Mailers placing an IMpb on their parcels must use version 1.6 (or version 1.5 for existing customers using this format). Only programs that do not require a manifest file (such as MRS) will receive end-to-end tracking, including confirmation of delivery, at no charge without an electronic file.

Comment: A commenter asked if the required use of version 1.6 of the electronic shipping services manifest files by June 3, 2013 applies only to commercial parcels, and not to MRS. This commenter stated that permit holders never know when their customers may choose to use a MRS label.

Response: As is currently the case, MRS parcels bearing an IMpb will not be required to be accompanied by an electronic shipping service manifest file. However, when current (or future) programs or features require a manifest file, the electronic shipping services manifest file version 1.6 will be required. The Postal Service has also expressed its intent to assist Merchandise Return Service (MRS) and Business Reply Mail (BRM) parcel mailers in developing processes capable of generating unique tracking barcodes for their labels. Although the use of unique tracking barcodes will be optional for these mailers, the end-to-end tracking, including confirmation of delivery, at no additional charge should be a significant benefit to most mailers.

Comment: Another commenter asked if a mailer can apply an IMpb to their parcels without using either version 1.5 or 1.6 of the electronic shipping services manifest files.

Response: IMpb use requires version 1.5 or 1.6 of the electronic shipping services manifest files. Version 1.5 is no longer offered to new IMpb mailers, and is only available for mailers currently using this version. All new IMpb mailers must use version 1.6 of the electronic shipping services manifest files. The only exceptions for use of an electronic shipping services manifest files are for certain current (*e.g.* MRS) and future programs or products that do not require a manifest.

Comment: A commenter asked how the Postal Service will differentiate between postage paid and postage due returns.

Response: The Postal Service has developed a number of unique 3-digit service type codes. In addition to various other capabilities, these new codes offer the capability to distinguish postage paid pieces from postage due returns.

Comment: A commenter asked how the tracking of returns using Delivery Confirmation service will work, and if any of the parcel return processes will change as a result of these new standards.

Response: In accordance with the new scanning policies, all parcels will receive acceptance, enroute, and delivered event scans. These additional event scans will appear in the mailer's extract files; and mailers will be able to track items online without additional fees. The processes for parcel return will not change as a result of these standards.

Comment: A commenter asked if Parcel Post will be eligible for Delivery Confirmation service at no charge.

Response: Parcel Post is generally classified as a retail product, and as such, is not eligible for end-to-end tracking, including confirmation of delivery, at no charge. Commercially-entered Parcel Post pieces, defined as those bearing a permit imprint, are also not eligible for end-to-end tracking, including confirmation of delivery, at no charge.

Comment: A commenter asked if the First-Class Mail commercials parcels that have moved to First-Class Package Service within the competitive product line will require different service type codes, and if Standard Mail parcels that may move to Parcel Select within the competitive product line will require different service type codes.

Response: The Postal Service does not plan to introduce different service type codes for the new competitive First-Class Package Service parcels, but it will define new service type codes for Parcel Select Lightweight, if the transition from Standard Mail parcels to Parcel Select occurs as planned.

Comment: A commenter asked if MRS mailers will still be able to access delivery status data from the Track & Confirm page on the *USPS.com* Web site, and if a data file of Delivery Confirmation dates by unique tracking number would be provided.

Response: Mailers will continue to have the ability to access delivery status information on *USPS.com,* and customer extract files will be provided for certified MRS customers who apply an IMpb or unique tracking or extra service barcodes to their MRS labels.

Comment: Another commenter asked if service type code 396 (which corresponds to no extra service) will be used for pre-printed MRS labels (since unique serial numbers cannot be used).

Response: Unique serial numbers will be required for IMpb and tracking or extra services barcodes, including MRS labels. It is possible to print unique serial numbers for pre-printed labels; many MRS and PRS customers do so currently. Service type code 396 may be used; but unique serial numbers are still required.

Comment: A commenter stated that required IMpb use by June 3, 2013 will negatively impact current Express Mail and Priority Mail volume, particularly those pieces sent by small and medium size mailers (many of which are postage meter customers). This commenter states that if the Postal Service adopts these new standards, postage meter customers will be placed in a distinct competitive disadvantage. The commenter opines that changes can be made to the proposed standards that would enable postage meter customers to continue to use the USPS.

Response: The Postal Service believes these new standards, including required use of an IMpb by January 7, 2013, to be equitable to all postage providers and that they do not favor server-based over distributed or client-based providers. This revision provides for a substantial implementation period. Once postage meter providers change their systems to enable the generation and manifesting of IMpb tracking and extra services barcodes, small and medium sized mailers using those systems will have the ability to create an IMpb and transmit electronic shipping services manifest files version 1.6 to the USPS. Those mailers who do not require tracking or extra services and do not wish to claim presort or destination entry pricing are not required to make any changes. In the proposed rule (75 FR 23749–23755) published April 28, 2011, the Postal Service stated ''in consideration of the small and medium-size mailers primarily using postage meters, the Postal Service will consult with the meter and PC Postage industry to collaboratively agree on a date for these mailers to be required to use the IMpb.'' The Postal Service will consider this comment during future consultations with the postage meter industry. The Postal Service also considers users of PC Postage stamp products to be in this mailer category and looks forward to their participation in this consultation process.

Approval and Review

The standards described in this final rule **Federal Register** are subject to approval by the Board of Governors and to regulatory review by the Postal Regulatory Commission (PRC). The Postal Service will inform the mailing community through a *DMM Advisory* notice at the conclusion of this approval and review process.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633 and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters and Cards

* * * * *

210 Express Mail

213 Prices and Eligibility

* * * * *

3.0 Basic Standards for Express Mail

* * * * *

[*Renumber current 3.2 as 3.3 and add new 3.2 as follows:*]

3.2 IMpb Standards

Commercial Express Mail with postage paid through a PC Postage system must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0. Effective January 7, 2013, all commercial Express Mail pieces (except for pieces paying postage through EMCA) must bear an IMpb.

* * * * *

220 Priority Mail

223 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail

* * * * *

[*Renumber current 3.3 and 3.4 as 3.4 and 3.5 and add new 3.3 as follows:*]

3.3 IMpb Standards

Priority Mail pieces (except Critical Mail pieces without an extra service) with postage paid through a PC Postage system must bear an Intelligent Mail package barcode prepared under 708.5.0.

* * * * *

300 Commercial Flats

* * * * *

310 Express Mail

313 Prices and Eligibility

* * * * *

3.0 Basic Standards for Express Mail

* * * * *

[*Renumber current 3.2 as 3.3 and add new 3.2 as follows:*]

3.3 IMpb Standards

Commercial Express Mail with postage paid through a PC Postage system must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0. Effective January 7, 2013, all commercial Express Mail pieces (except for pieces paying postage through EMCA) must bear an IMpb.

* * * * *

320 Priority Mail

323 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail

* * * * *

[*Renumber current 3.3 and 3.4 as 3.4 and 3.5 and add new 3.3 as follows:*]

3.3 IMpb Standards

Priority Mail pieces (except Critical Mail pieces without an extra service) with postage paid through a PC Postage system must bear an Intelligent Mail package barcode prepared under 708.5.0.

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

413 Prices and Eligibility

* * * * *

3.0 Basic Standards for Express Mail

* * * * *

[*Renumber current 3.2 as 3.3 and add new 3.2 as follows:*]

3.3 IMpb Standards

Commercial Express Mail with postage paid through a PC Postage system must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0. Effective January 7, 2013, commercial Express Mail pieces (except for pieces paying postage through EMCA) must bear an IMpb.

* * * * *

420 Priority Mail

423 Prices and Eligibility

* * * * *

3.0 Basic Standards for Priority Mail

* * * * *

[*Renumber current 3.2 and 3.3 as 3.3 and 3.4 and add new 3.2 as follows:*]

3.2 IMpb Standards

Priority Mail parcels with postage paid through a PC Postage system must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

* * * * *

430 First-Class Package Service Parcels

433 Prices and Eligibility

1.0 Prices and Fees for First-Class Package Service Parcels

* * * * *

[*Revise title of 1.3 as follows:*]

1.3 Commercial Base Prices

[*Revise the introductory text of 1.3 as follows:*]

For prices, see Notice 123–Price List. Commercial base parcels may be presorted or nonpresorted. Presorted parcels must include a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, on each parcel. Effective January 7, 2013, presorted parcels must include a unique Intelligent Mail package barcode with a postal routing code on each parcel. Postage for presorted parcels must be paid under 434. Nonpresorted First-Class Package Service parcels mailed under the following conditions are eligible for single-piece commercial base parcel prices:

* * * * *

1.4 Commercial Plus Prices

For prices, see Notice 123–Price List. First-Class Package Service machinable parcels less than 16 ounces and Merchandise Return Service parcels are eligible for commercial plus prices for customers that:

* * * * *

[*Add a new 1.4e as follows:*]

e. Include a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, on each presorted parcel. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code.

1.5 Surcharge

[*Revise 1.5 as follows:*]

A surcharge applies for parcels with the following characteristics:

a. Unless prepared in 5-digit/scheme containers, presorted parcels weighing less than 2 ounces or that are irregularly shaped, such as rolls, tubes, and triangles.

b. Nonpresorted parcels (except those paid with PC Postage; see 3.7) that do not bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code to avoid a surcharge.

* * * * *

3.0 Basic Standards for First-Class Package Service Parcels

* * * * *

[*Revise title of 3.3 as follows:*]

3.3 Additional Basic Standards

All presorted First-Class Package Service parcels must:

* * * * *

[*Add a new 3.3f as follows:*]

f. Bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, must include a unique Intelligent Mail package barcode with a postal routing code.

* * * * *

[*Renumber current 3.6 as 3.7 and add new 3.6 as follows:*]

3.6 IMpb Standards

First Class Package Service parcels with postage paid through a PC Postage system must bear an Intelligent Mail package barcode prepared under 708.5.0.

* * * * *

450 Parcel Select

453 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Parcel Select and Parcel Select Regional Ground

3.1 Destination Entry Price Eligibility

* * * * *

3.1.2 Basic Standards

For Parcel Select destination entry, pieces must meet the applicable standards in 455.4.0 and the following criteria:

* * * * *

[*Add a new 3.1.2f as follows:*]

f. Pieces must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code on each parcel.

* * * * *

3.2 Parcel Select NDC and ONDC Presort Price Eligibility

[*Revise 3.2 by adding two new last sentences as follows:*]

* * * Parcel Select NDC and ONDC Presort pieces must bear a unique Intelligent Mail package barcode or extra services barcode, including a

postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code on each parcel.

3.3 Parcel Select Barcoded Nonpresort Price Eligibility

[*Revise 3.3 as follows:*]

Pieces mailed at Parcel Select Barcoded Nonpresort prices must be machinable parcels. Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. There is a minimum volume of 50 pieces per mailing for parcels mailed at the Parcel Select Barcoded Nonpresort price, except for parcels with USPS-approved PC Postage, for which there is no minimum volume per mailing. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code on each parcel.

[*Delete items 3.3a through 3c, and exhibit 3.3, in their entirety.*]

3.4 Parcel Select Regional Ground

* * * * *

3.4.1 General Eligibility

Parcel Select Regional Ground prices are available for machinable parcels (see 401.1.5), measure .35 cubic foot or less and weigh 5 pounds or less when customers meet the following requirements:

* * * * *

[*Revise 3.4.1d as follows:*]

Pieces must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code on each parcel.

* * * * *

460 Bound Printed Matter

463 Prices and Eligibility

* * * * *

4.0 Price Eligibility for Bound Printed Matter Parcels

4.1 Price Eligibility

BPM prices are based on the weight of a single addressed piece or 1 pound, whichever is higher, and the zone (where applicable) to which the piece is addressed. Price categories are as follows:

* * * * *

[*Add two new last sentences to 4.1b as follows:*]

b. * * * Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code.

[*Add two new last sentences to 4.1c as follows:*]

c. * * * Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique Intelligent Mail package barcode with a postal routing code.

* * * * *

466 Enter and Deposit

* * * * *

3.0 Destination Entry

3.1 General

[*Revise the text of 3.1 as follows:*]

Destination entry prices apply to Presorted and Carrier Route Bound Printed Matter (BPM) that is deposited at a destination network distribution center (DNDC), destination sectional center facility (DSCF), or destination delivery unit (DDU) as specified below. Each piece can claim only one destination entry price; an individual pallet may contain pieces claimed at different destination entry prices. Each BPM parcel entered at a destination entry price must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels claiming destination entry prices must include a unique Intelligent Mail package barcode with a postal routing code on each parcel.

* * * * *

470 Media Mail and Library Mail

473 Prices and Eligibility

* * * * *

6.0 Price Eligibility for Media Mail and Library Mail Parcels

* * * * *

6.2 Price Eligibility Standards

[*Revise 3.2 by adding a new second and third sentence as follows:*]

* * * Each piece must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, presorted parcels must include a unique Intelligent Mail package barcode with a postal routing code. * * *

* * * * *

6.3 Price Categories for Media Mail and Library Mail

Media Mail and Library Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:

* * * * *

[*Add a new 6.3d as follows:*]

d. Presorted Media Mail and Library Mail parcels with postage paid through a PC Postage system must bear an Intelligent Mail package barcode prepared under 708.5.0.

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500 Additional Mailing Services

503 Extra Services

* * * * *

2.0 Registered Mail

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2.4 Mailing

* * * * *

2.4.5 Privately Printed Label 200

[*Revise 2.4.5 by adding a new third sentence as follows:*]

* * * Effective January 7, 2013, privately printed labels must include an Intelligent Mail package barcode prepared under 708.5.0, except that labels must retain the human-readable text, label design elements and color consistent with Label 200. * * *

* * * * *

3.0 Certified Mail

* * * * *

3.3 Mailing

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3.3.4 Privately Printed Form 3800

[*Revise 3.3.4 by adding a new third sentence as follows:*]

* * * Effective January 7, 2013, privately printed forms must include an Intelligent Mail package barcode prepared under 708.5.0, except that forms must retain the human-readable text, label design elements and color consistent with USPS Form 3800. * * *

* * * * *

4.0 Insured Mail

* * * * *

4.3 Mailing

* * * * *

4.3.4 Privately Printed Form 3813–P

[*Revise 4.3.4 by adding new third and forth sentences as follows:*]

* * * Effective January 7, 2013, privately printed forms must include an Intelligent Mail package barcode prepared under 708.5.0. Unless printing integrated forms under 4.3.5, forms must retain the label design elements and color consistent with USPS Form 3813–P. * * *

4.3.5 Integrated Barcodes

The following options are available for mailers who print their own labels:

* * * * *

[*Resequence the current 4.3.5c as the new 4.3.5e and add a new 4.3.5c and 5d as follows:*]

c. Intelligent Mail package barcodes placed on insured packages with indemnity coverage of $200.00 or less must bear a human-readable service banner with the text ''USPS Tracking #'' printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes may bear the appropriate human-readable service banner text ''USPS Delivery Confirmation,'' prepared under 708.5.0.

d. Intelligent Mail package barcodes placed on insured packages with indemnity coverage greater than $200.00 and with electronic Signature Confirmation service must bear a human-readable service banner with the text ''USPS Signature Tracking #'' printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes may bear a human-readable service banner with the text ''USPS Insured,'' or ''USPS Signature Confirmation,'' prepared under 708.5.0.

[*Add a new last sentence to the introductory paragraph of resequenced 4.3.5e as follows:*]

e. * * * The following standards also apply:

[*Delete resequenced 4.3.5e3 in its entirety and revise resequenced e1 and e2 as follows:*]

1. Mailers may purchase insurance online for indemnity coverage of $200.00 or less with electronic option Delivery Confirmation service. Prepare barcodes under 4.3.5c.

2. Mailers may purchase insurance online for indemnity coverage of more than $200, up to $500 (up to $5,000 online through Click-n-Ship), with electronic option Delivery Confirmation service or Signature Confirmation service. In both cases, prepare barcodes under 4.3.5d.

* * * * *

9.0 Return Receipt for Merchandise

* * * * *

9.3 Mailing

* * * * *

9.3.5 Privately Printed Form 3804

[*Revise 9.3.5 by adding a new third sentence as follows:*]

* * * Effective January 7, 2013, privately printed forms must include an Intelligent Mail package barcode prepared under 9.3.6 and 708.5.0, and must retain the label design elements and color consistent with USPS Form 3804. * * *

* * * * *

[*Renumber current 9.3.6 and 9.3.7 as the new 9.3.7 and 9.3.8 and add a new 9.3.6 as follows:*]

9.3.6 Barcodes

Barcodes printed by mailers must meet the following standards:

a. Intelligent Mail package barcodes and other approved extra services barcodes applied by mailers must be prepared in accordance with 708.5.0.

b. Intelligent Mail package barcodes must include the human-readable service banner with the text ''USPS Signature Tracking #'' printed in accordance with Exhibit 708.5.1.4.

c. Other approved extra services barcodes may bear a human-readable service banner with the text ''Return Receipt for Merchandise'' prepared in accordance with 708.5.0.

* * * * *

10.0 Delivery Confirmation

* * * * *

10.3 Labels

10.3.1 Types of Labels

Mailers must use one of the label options shown below (for additional information see Publication 91, *Confirmation Services Technical Guide*):

* * * * *

[*Revise 10.3.1b as follows:*]

b. Label 314 is available to electronic option mailers. Effective January 7, 2013, labels must include an Intelligent Mail package barcode prepared under 708.5.0.

* * * * *

[*Revise the first sentence and add a new second sentence for 10.3.1c as follows:*]

c. Privately printed barcoded labels must meet the requirements in 10.3 and 10.4. Effective January 7, 2013, privately printed labels must include an Intelligent Mail package barcode prepared under 10.4 and 708.5.0. * * *

[*Delete Exhibit 10.3.1c, Privately Printed Label, in its entirety.*]

* * * * *

10.4 Barcodes

* * * * *

10.4.3 Printing

* * * Labels used for Delivery Confirmation service must meet these additional specifications:

[*Revise 10.4.3a as follows:*]

a. Intelligent Mail package barcodes must bear a human-readable service banner with the text ''USPS Tracking #'' printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes may bear a human-readable service banner with the text ''USPS Delivery Confirmation,'' prepared in accordance with 708.5.0

* * * * *

11.0 Signature Confirmation

* * * * *

11.3 Labels

11.3.1 Types of Labels

Mailers must use one of the label options shown below (for additional information see Publication 91, *Confirmation Services Technical Guide*):

* * * * *

[*Revise 11.3.1b as follows:*]

b. Label 315 is available to electronic option mailers. Effective January 7, 2013, labels must include an Intelligent Mail package barcode prepared under 708.5.0.

* * * * *

[*Revise the first sentence and add a new second sentence for 10.3.1c as follows:*]

c. Privately printed barcoded labels must meet the requirements in 11.3 and 11.4. Effective January 7, 2013, privately printed labels must include an Intelligent Mail package barcode prepared under 11.4 and 708.5.0. * * *

[*Delete Exhibit 11.3.1c, Privately Printed Label, in its entirety.*]

* * * * *

11.4 Barcodes

* * * * *

11.4.3 Printing

* * * Labels used for Signature Confirmation service must meet these additional specifications:

[*Revise 10.4.3a as follows:*]

a. Intelligent Mail package barcodes must bear a human-readable service banner with the text ''USPS Signature Tracking #'' printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes may bear a human-readable service banner with the text ''USPS Signature Confirmation'' prepared in accordance with 708.5.0

* * * * *

12.0 Collect on Delivery (COD)

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12.3 Forms

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12.3.2 Privately Printed Form 3816–AS

[*Revise 12.3.2 by adding a new third sentence as follows:*]

* * * Effective January 7, 2013, privately printed forms must include an Intelligent Mail package barcode prepared under 9.3.6 and 708.5.0, and must retain the human-readable text, label design elements and color consistent with USPS Form 3816–AS. * * *

* * * * *

507 Mailer Services

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9.0 Business Reply Mail

* * * * *

9.4 General Information

* * * * *

9.4.3 Services

[*Revise 9.4.3 as follows:*]

No extra services are permitted with BRM, except for BRM parcels bearing a USPS-approved Delivery Confirmation service label, or BRM parcels bearing an Intelligent Mail package barcode including Delivery Confirmation service.

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

7.0 Combining Package Services and Parcel Select Parcels for Destination Entry

7.1 Combining Parcels—DSCF and DDU Entry

7.1.1 Qualification

[*Revise the last sentence of 7.1.1 as follows:*]

* * * Parcels claiming destination entry pricing must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels claiming destination entry prices must include a unique Intelligent Mail package barcode with a postal routing code.

* * * * *

708 Technical Specifications

* * * * *

5.0 Standards for Package and Extra Service Barcodes

5.1 Intelligent Mail Package Barcode

* * * * *

5.1.4 Physical Barcode Requirements

[*Revise the introductory paragraph of 5.1.4 as follows:*]

Detailed physical specifications for barcodes are provided in the resource documents, available on RIBBS at *http://ribbs.usps.gov/*. Physical barcode requirements are as follows:

* * * * *

[*Revise 5.1.4d as follows:*]

d. *Barcode Height:* unless allowed by exception, the minimum height must be at least 0.75 inch.

* * * * *

g. *Human-Readable Representation of Barcode Data and Service Banner:* text must be printed in accordance with Exhibit 5.1.4 and as follows:

* * * * *

[*Revise 5.1.4g2 as follows:*]

2. Service Banners must include the human-readable text ''USPS Signature Tracking #'' (or ''USPS Signature Tracking Number'') for mailpieces requiring a signature at delivery and ''USPS Tracking #'' (or ''USPS Tracking Number'') for all other mailpieces. Service Banner text shown in Exhibit 5.1.4 is an example. See Appendix I in Publication 199 or Publication 91 (addendum appendix H) at *http://ribbs.usps.gov/* for additional information.

* * * * *

[*To reflect new barcode format, replace current Exhibit 5.1.4 with a new Exhibit 5.1.4 as follows:*]

Exhibit 5.1.4 Barcode Specifications

[*Placeholder for revised barcode exhibit.*]

* * * * *

5.1.7 Electronic File

* * * Electronic files must include the following elements:

* * * * *

[*Add a new 5.1.7d and 5.1.7e as follows:*]

d. Effective January 7, 2013, mailers of commercial parcels, except Standard Mail parcels and parcels bearing PC Postage, claiming presort or destination entry pricing must use version 1.6 (or subsequent versions) of the electronic shipping services manifest files including each destination ZIP + 4 code, or each destination delivery address.

e. Mailers using a PC Postage system must use version 1.6 (or subsequent versions) of the electronic shipping services manifest files, including each destination ZIP + 4 code, or each destination delivery address.

[*Add a new 5.18 as follows:*]

5.18 Alternate Approval

Labels not meeting IMpb specifications or other label element standards, but are still able to demonstrate acceptable functionality within USPS processes, may be allowed using an alternative approval process authorized by the vice president, Product Information.

* * * * *

5.2 Other Package Barcodes

* * * * *

[*Renumber current 5.2.11 and 5.2.12 as the new 5.2.12 and 5.2.13, and add a new 5.2.11 as follows:*]

5.2.10 Service Banner Text

Except with Certified Mail, Registered Mail, Adult Signature, Parcel Return Service, and Express Mail or Priority Mail Open and Distribute services, mailers preparing extra service barcodes under 5.2 may optionally use a ''USPS Tracking #'' human-readable service banner text above the barcode on packages not requiring a signature at delivery, and a ''USPS Signature Tracking #'' service banner text above the barcode on packages where a signature is required at delivery.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–24705 Filed 9–26–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0839; FRL–9469–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indianapolis Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Indiana's request to redesignate the Indianapolis, Indiana nonattainment area (Hamilton, Hendricks, Johnson, Marion, and Morgan Counties) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard)

for fine particulate matter ($PM_{2.5}$), because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Indiana Department of Environmental Management (IDEM) submitted this request to EPA on October 20, 2009 and supplemented it on May 31, 2011. EPA's approval involves several additional related actions. EPA is making a determination that the Indianapolis area has attained the 1997 annual $PM_{2.5}$ standard. EPA is approving, as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS through 2025 in the area. EPA is approving the 2006 emissions inventory for the Indianapolis area as meeting the comprehensive emissions inventory requirement of the CAA. Finally, EPA finds adequate and is approving Indiana's Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2025 for the Indianapolis area.

DATES: This direct final rule will be effective November 28, 2011, unless EPA receives adverse comments by October 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0839, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Aburano.Douglas@epa.gov.*
- *Fax:* (312) 408–2779.
- *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Doug Aburano, Control Strategies Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0839. 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 and viruses.

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 U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, or *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What actions is EPA taking?
II. What is the background for these actions?
III. What are the criteria for redesignation to attainment?
IV. What is EPA's analysis of the state's request?
A. Attainment Determination and Redesignation
B. Adequacy of Indiana's MVEBs
C. 2006 Comprehensive Emissions Inventory
V. Summary of Actions
VI. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is making a determination that the Indianapolis area is attaining the 1997 annual $PM_{2.5}$ standard and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus approving the request from IDEM to change the legal designation of the Indianapolis area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is also taking several additional actions related to Indiana's $PM_{2.5}$ redesignation request, as discussed below.

EPA is approving Indiana's $PM_{2.5}$ maintenance plan for the Indianapolis area as a revision to the Indiana SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Indianapolis area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2025.

EPA is approving 2006 emissions inventories for primary $PM_{2.5}$,[1] NO_X, and Sulfur Dioxide (SO_2),[2] documented in Indiana's May 31, 2011, $PM_{2.5}$ redesignation request supplemental submittal. These emissions inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, EPA finds adequate and is approving 2015 and 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Indianapolis area. These MVEBs will be used in future transportation conformity analyses for the area.

II. What is the background for these actions?

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$

[1] Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[2] NO_X and SO_2 are precursors for fine particulates formed through chemical reactions and other related processes in the atmosphere.

concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard at 65 μg/m³, based on a three-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations and classifications for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Indianapolis, IN area as nonattainment for the 1997 annual $PM_{2.5}$ standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 μg/m³ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour standard to 35 μg/m³, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations. In response to legal challenges of the 2006 annual $PM_{2.5}$ standard, the U.S. Court of Appeals for District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual $PM_{2.5}$ standard would also indicate attainment of the remanded 2006 annual standard. Since the Indianapolis area is designated as nonattainment only for the 1997 annual $PM_{2.5}$ standard, today's proposed action addresses redesignation to attainment only for this standard.

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion of NO_X emissions from power plants, mobile sources, and other combustion sources.

III. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal emission control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

IV. What is EPA's analysis of the state's request?

A. Attainment Determination and Redesignation

EPA is making a determination that the Indianapolis area has attained the 1997 annual $PM_{2.5}$ standard and that the area has met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's approval of the redesignation request is as follows:

1. The Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS (Section 107(d)(3)(E)(i))

EPA is making a determination that the Indianapolis area has attained the 1997 annual $PM_{2.5}$ NAAQS. An area may be considered to be attaining the 1997 annual $PM_{2.5}$ NAAQS if there are no violations, as determined in accordance with 40 CFR 50.7 and part 50, Appendix N, based on three complete consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of annual means must not exceed 15.0 μg/m³ at all relevant monitoring sites in the subject area. Under 40 CFR part 50, Appendix N 4.1, a year of $PM_{2.5}$ data meets completeness requirements when ''at least 75 percent of the scheduled sampling days for each quarter has valid data.''

The redesignation request includes monitoring data showing attainment of the standard for the 2006–2008, 2007–2009, and 2008–2010 time periods. All of the $PM_{2.5}$ monitors in the Indianapolis area are located in Marion County. Table 1, below, provides a summary of the $PM_{2.5}$ annual air quality monitoring data for the years 2006–2010. Table 2, below, provides the three-year average of annual means for the 2006–2008, 2007–2009, and 2008–2010 time periods.

TABLE 1—$PM_{2.5}$ ANNUAL MEAN $PM_{2.5}$ CONCENTRATIONS FOR THE INDIANAPOLIS AREA

[μg/m³]

Monitor	Yearly annual mean				
	2006	2007	2008	2009	2010
Indianapolis—Washington Park 180970078	14.14	15.66	13.02	12.11	12.86
Indianapolis—W. 18th Street 180970081	14.12	16.07	13.75	12.96	14.03
Indianapolis—E. Michigan Street 180970083	14.15	15.93	13.17	12.40	13.91

TABLE 2—THREE-YEAR AVERAGE OF THE ANNUAL MEAN $PM_{2.5}$ CONCENTRATIONS FOR THE INDIANAPOLIS AREA

[μg/m³]

Monitor	2006–2008	2007–2009	2008–2010
Indianapolis—Washington Park 180970078	14.3	13.6	12.7
Indianapolis—E. 75th Street 180970081	14.6	14.3	13.6
Indianapolis—E. Michigan Street 180970083	14.4	13.8	13.2

The data in tables 1 and 2 show that all relevant $PM_{2.5}$ monitors in the Indianapolis $PM_{2.5}$ nonattainment area have recorded $PM_{2.5}$ concentrations attaining the 1997 annual $PM_{2.5}$ standard during the 2006–2008, 2007–2009, and 2008–2010 time periods. These annual average $PM_{2.5}$ concentrations are based on complete $PM_{2.5}$ monitoring data that have been quality-assured and stored in EPA's Air Quality System (AQS) database. Therefore, EPA concludes that the Indianapolis area has attained the 1997 $PM_{2.5}$ standard. Preliminary data available for 2011 are consistent with continued attainment.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Indiana's SIP meets all applicable SIP requirements for purposes of redesignation for the Indianapolis area under section 110 of the CAA (general SIP requirements) and all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(c)(3), we have approved all applicable requirements of the Indiana SIP for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is approving Indiana's 2006 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these determinations, we have ascertained which SIP requirements are applicable to the area for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

a. The Indianapolis Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA holds that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we conclude that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we conclude the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996) and (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Indiana's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Indiana SIP addressing section 110 requirements (including provisions addressing particulate matter) at 40 CFR 52.770. On December 7, 2007, September 9, 2008, March 23, 2011, and April 7, 2011, Indiana made submittals addressing ''infrastructure SIP'' elements required by section 110(a)(2) of the CAA. EPA approved elements of Indiana's submittals on July 13, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Indianapolis area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the State's $PM_{2.5}$ redesignation request.

ii. Part D Requirements

EPA has determined that, upon approval of the base year emissions inventories discussed in section IV.C. of this rulemaking, the Indiana SIP will meet the applicable SIP requirements for the Indianapolis area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Indianapolis area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation

in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. See 40 CFR 51.1004(c).

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Indianapolis area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. *Id.* The requirement to submit the section 172(c)(9) contingency measures is similarly not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. Indiana submitted a 2006 base year emissions inventory along with the redesignation request. As discussed below in section IV.C., EPA is approving the 2006 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Indianapolis area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Indiana's current NSR program on October 7, 1994 (59 FR 51108). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the Indianapolis area will be able to maintain the standard without part D NSR in effect; therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Indianapolis area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we find that the Indiana SIP meets the section 110(a)(2) requirements applicable for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State transportation conformity regulations must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA approved Indiana's general and transportation conformity SIPs on January 14, 1998 (63 FR 2146) and August 17, 2010 (75 FR 50730), respectively. Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEALU), which was signed into law on August 10, 2005 (Public Law 109–59). In adopting this revision to the CAA, Congress streamlined the requirements for state conformity SIPs. Indiana is in the process of updating its transportation conformity SIP to meet these new requirements.

Indiana has submitted on-road MVEBs for the Indianapolis area of 353.40 tons per year (tpy) and 317.86 tpy primary $PM_{2.5}$ and 14,956.79 tpy and 8,839.80 tpy NO_X for the years 2015 and 2025, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is made on or after the effective date of the adequacy finding and maintenance plan approval.

b. The Indianapolis Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Indiana's comprehensive 2006 emissions inventory, EPA will have fully approved the Indiana SIP for the Indianapolis area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, memorandum from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment''; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is approving Indiana's 2006 base year emissions inventory for the Indianapolis area as meeting the requirement of section 172(c)(3) of the CAA. No Indianapolis area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Indiana has demonstrated that the observed air quality improvement in the Indianapolis area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

In making this showing, IDEM has calculated the change in emissions between 2002, one of the years used as a basis for designating the Indianapolis area as nonattainment, and 2008, one of the years in the period during which the Indianapolis area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Indianapolis

area and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower volatile organic compound (VOC), NO_X, and SO_2 emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). Some of the emissions reductions resulting from new vehicle standards occurred during the 2008–2010 attainment period; however additional reductions will continue to occur throughout the maintenance period as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Indiana prior to January 2006 had a sulfur content of about 500 ppm.

Heavy-Duty Diesel Engine Rule. This rule, which EPA issued in July 2000, limited the sulfur content of diesel fuel beginning in 2004. A second phase took effect in 2007 which reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in primary $PM_{2.5}$ emissions and a 95 percent reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel. The reductions in fuel sulfur content occurred by the 2008–2010 attainment period. Some of the emissions reductions resulting from new vehicle standards occurred during the 2008–2010 attainment period, however additional reductions will continue to occur throughout the maintenance period as the fleet of older heavy duty diesel engines turns over. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

Nonroad Diesel Rule. In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining equipment, which established engine emission standards to be phased in between 2008 and 2014. The rule also required reductions to the sulfur content in nonroad diesel fuel by over 99 percent. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm, by 2010. The combined engine and fuel rules will reduce NO_X and PM emissions from large nonroad diesel engines by over 90 percent, compared to current nonroad engines using higher sulfur content diesel. The reduction in fuel sulfur content yielded an immediate reduction in sulfate particle emissions from all diesel vehicles. In addition, some emissions reductions from the new engine emission standards were realized over the 2008–2010 time period, although most of the reductions will occur over the maintenance period as the fleet of older nonroad diesel engines turns over.

Nonroad Large Spark-Ignition Engine and Recreational Engine Standards. In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine Diesel engine standards were phased in from 2006 through 2009. With full implementation of all of the nonroad spark-ignition engine and recreational engine standards, an overall 72 percent reduction in VOC, 80 percent reduction in NO_X and 56 percent reduction in carbon monoxide (CO) emissions are expected by 2020. Some of these emission reductions occurred by the 2008–2010 attainment period and additional emission reductions will occur during the maintenance period as the fleet turns over.

ii. Control Measures in Upwind Areas

Given the significance of sulfates and nitrates in the Indianapolis area, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants.

*NO_X SIP Call.*On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

Clean Air Interstate Rule (CAIR). EPA proposed CAIR on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and improve air quality in many areas across Eastern United States. However, on July 11, 2008, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded both CAIR and the associated CAIR FIPs in their entirety. See *North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. 2008). EPA petitioned for a rehearing, and the D.C. Circuit issued an order remanding CAIR and the CAIR FIPs to EPA without vacatur. See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The D.C. Circuit, thereby, left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion. *Id.* at 1178. The court directed EPA to ''remedy CAIR's flaws'' consistent with the July 11, 2008, opinion, but declined to impose a schedule on EPA for completing this action. *Id*).

On August 8, 2011, at 76 FR 48208, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. The CAIR, among other things, required NO_X emission reductions that contributed to the air quality improvement in the Indianapolis nonattainment area. The CAIR emission reduction requirements limit emissions through 2011; CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond. CSAPR requires substantial reductions of SO_2 and NO_X emissions from Electric Generating Units (EGUs or power plants) across most of Eastern United

States, with implementation beginning on January 1, 2012. In particular, this rule requires reduction of these emissions to levels well below the levels that led to attainment of the 1997 annual $PM_{2.5}$ standard in the Indianapolis nonattainment area. Thus the emission reductions that are mandated first by CAIR and then by CSAPR may be considered to be permanent and enforceable. In turn, the air quality improvement in the Indianapolis nonattainment area that has resulted from EGU emission reductions to date (as well as the substantial further air quality improvement that would be expected to result from full implementation of CSAPR) may also be considered to be permanent and enforceable.

b. Emission Reductions

Indiana developed emissions inventories for NO_X, primary $PM_{2.5}$, and SO_2 for 2002, one of the years used to designate the areas as nonattainment, and 2008, one of the years the Indianapolis area monitored attainment of the standard.

EGU SO_2 and NO_X emissions were derived from EPA's Clean Air Market's acid rain database. These emissions reflect implementation of the acid rain program and EPA's NO_X SIP call. The 2008 emissions also reflect implementation of CAIR. All other point source emissions were obtained from Indiana's source facility emissions reporting.

Area source emissions for the Indianapolis area for 2002 and 2005 were taken from Indiana's 2002 and 2005 periodic emissions inventories.[3] The 2005 periodic emission inventory area source emissions were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOBILE6.2.

Note that all emissions discussed below were documented in appendices B through E of Indiana's May 31, 2011, redesignation request submittal. For these data and additional emissions inventory data, please go to EPA's digital docket for this proposed rule, *http://www.regulations.gov,* which includes a digital copy of Indiana's May 31, 2011, submittal.

Emissions data are shown in tables 3 through 5 below.

TABLE 3—COMPARISON OF 2002 AND 2008 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA

Sector	NO_X		
	2002	2008	Net change 2002–2008
Point	8,045.92	6,259.45	−1,786.47
EGU	12,388.02	7,183.98	−5,204.04
Area	5,518.12	4,885.91	−632.21
Nonroad	11,973.65	10,953.68	−1,019.97
On-road	38,059.50	21,494.74	−16,564.76
Total	75,985.21	50,777.76	−25,207.45

TABLE 4—COMPARISON OF 2002 AND 2008 PRIMARY $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA

Sector	Direct $PM_{2.5}$		
	2002	2008	Net change 2002–2008
Point	653.57	843.05	189.48
EGU	110.66	1,966.49	1,855.83
Area	2,934.93	85.36	−2,849.57
Nonroad	847.73	805.42	−42.31
On-road	670.50	403.67	−266.83
Total	5,217.39	4,103.99	−1,113.40

TABLE 5—COMPARISON OF 2002 AND 2008 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA

Sector	SO_2		
	2002	2008	Net change 2002–2008
Point	4,835.58	2,415.94	−2,419.64
EGU	68,148.53	38,027.05	−30,121.48
Area	8,676.35	1,830.02	−6,846.33

[3] Periodic emission inventories are derived by states every three years and reported to EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

TABLE 5—COMPARISON OF 2002 AND 2008 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA—Continued

Sector	SO_2		
	2002	2008	Net change 2002–2008
Nonroad	1,121.00	576.13	−544.87
On-road	1,219.50	653.54	−565.96
Total	84,000.96	43,502.68	−40,498.28

Table 3 shows that the Indianapolis area reduced NO_X emissions by 25,207.45 tpy between 2002 and 2008. Table 4 shows that the Indianapolis area reduced direct $PM_{2.5}$ emissions by 1,113.40 tpy between 2002 and 2008. Table 5 shows that the Indianapolis area reduced SO_2 emissions by 40,498.28 tpy between 2002 and 2008.

Because $PM_{2.5}$ concentrations in the Indianapolis area are significantly impacted by the transport of sulfates and nitrates, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants. Table 6, below, presents actual statewide EGU emissions data compiled by EPA's Clean Air Markets Division for the years 2002 and 2008. Emissions for 2002 reflect implementation of the acid rain program while emissions for 2008 also reflect reductions implemented under CAIR. This table shows emissions for all states that, according to modeling conducted for the final CSAPR, are estimated to contribute at least 0.15 $\mu g/m^3$ to Indianapolis area annual average $PM_{2.5}$ concentrations in the absence of CAIR or CSAPR. (See *http://epa.gov/crossstaterule/pdfs/CSAPR_Ozone%20and%20PM2.5_Contributions.xls.*)

TABLE 6—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE INDIANAPOLIS AREA

State	NO_X			SO_2		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Alabama	161,559	112,625	−48,934	448,248	357,547	−90,701
Illinois	174,247	119,930	−54,317	353,699	257,357	−96,342
Indiana	281,146	190,092	−91,054	778,868	565,459	−213,409
Iowa	78,956	49,023	−29,933	127,847	109,293	−18,554
Kentucky	198,599	157,903	−40,696	482,653	344,356	−138,297
Michigan	132,623	107,624	−25,000	342,999	326,501	−16,498
Missouri	139,799	88,742	−51,057	235,532	258,269	22,737
Ohio	370,497	235,049	−135,448	1,132,069	709,444	−422,625
Pennsylvania	200,909	183,658	−17,251	889,766	831,915	−57,851
Tennessee	155,996	85,641	−70,356	336,995	208,069	−128,926
West Virginia	225,371	99,484	−125,887	507,110	301,574	−205,536
Wisconsin	88,970	47,794	−41,175	191,257	129,694	−61,563
Total	2,208,672	1,477,564	−731,108	5,827,042	4,399,478	−1,427,564

Table 6 shows that states impacting the Indianapolis area reduced NO_X and SO_2 emissions from EGUs by 731,108 tpy and 1,427,564 tpy, respectively, between 2002 and 2008.

Based on the information summarized above, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Indiana's request to redesignate the Indianapolis nonattainment area to attainment status, IDEM submitted a SIP revision to provide for maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the area through 2025.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: the attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The IDEM developed emissions inventories for NO_X, direct $PM_{2.5}$, and SO_2 for 2008, one of the years used to demonstrate monitored attainment of the 1997 annual $PM_{2.5}$ standard, as described in section IV.A.3.b., above. The attainment level of emissions is summarized in tables 2 through 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, IDEM submitted revisions to the Indiana $PM_{2.5}$ SIP to include a maintenance plan for the Indianapolis area, as required by section 175A of the CAA. This demonstration shows maintenance of the annual $PM_{2.5}$ standard through 2025 by showing that current and future emissions of NO_X, direct $PM_{2.5}$ and SO_2 for the area remain at or below attainment year emission levels. A maintenance demonstration may be based on such an emissions inventory approach. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Indiana is using emissions inventory projections for the years 2015, 2020, and 2025 to demonstrate maintenance. The projected emissions were estimated by IDEM, with assistance from LADCO, and the Indianapolis Metropolitan Planning Organization.

As noted above, IDEM and others estimating mobile source emissions for the Indianapolis area have used EPA's MOBILE6.2 mobile source emission factor model to estimate mobile source emissions in both the October 20, 2009, submittal and the May 31, 2011, submittal rather than MOVES to estimate mobile source emissions.[4] EPA is proposing to approve Indiana's continued use of MOBILE6.2 in this maintenance plan. Air quality data indicate that the area has attained the 1997 $PM_{2.5}$ annual standard, and large emission reductions are expected in this area and in upwind areas in the coming years, which will maintain the 1997 $PM_{2.5}$ annual standard during the maintenance period. If MOVES had been used to estimate on-road mobile source emissions, we believe it would not have changed this conclusion.

In addition, the recent, May 31, 2011, submittal only extended the maintenance period by five years from the maintenance period documented in the October 20, 2009, submittal, and it was not necessary for the newer submittal to revisit earlier years of the maintenance period. This extension of the maintenance period was necessary because: (1) EPA could not act on the original submittal at an earlier date due to issues related to the remand of CAIR; and, (2) Indiana, subsequently, needed to extend the maintenance period to meet CAA maintenance demonstration requirements. Further, consistent with documentation for Question 5 in EPA's ''Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (the MOVES guidance) (*http://www.epa.gov/otaq/models/moves/420b09046.pdf*), we have concluded that, since the bulk of the work on the maintenance plan was performed in 2009, before MOVES was released, the continued use of MOBILE6.2 in the maintenance plan is warranted. Even the supplemental work performed by Indiana to support the May 31, 2011, revision was done relatively soon after MOVES was officially released for use in SIPs on March 2, 2010, at 75 FR 9411. Based on these factors, we have concluded that Indiana's continued use of MOBILE6.2 is justified. In addition, the continued use of MOBILE6.2 avoids an adverse impact on State resources as also described in the documentation for Question 5 of the MOVES guidance.

As discussed in section IV.3.a. above, many of the control programs that helped to bring the area into attainment of the standard will continue to achieve additional emission reductions over the maintenance period. These control programs include Tier 2 emission standards for vehicles and gasoline sulfur standards, the heavy-duty diesel engine rule, the nonroad diesel rule, and the nonroad large spark-ignition engine and recreation engine standards. In addition, implementation of CSAPR will result in further reductions in SO_2 and NO_X emissions over the maintenance period. Emissions data for all sources by source sector are shown in tables 7 through 9, below.

TABLE 7—COMPARISON OF 2008, 2015, 2020, AND 2025 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA

Sector	NO_X				
	2008	2015	2020	2025	Net change 2008–2025
Point	6,259.45	6,267.98	6,182.66	6,098.76	−160.69
EGU	7,183.98	6,864.90	6,864.17	6,863.44	−320.54
Area	4,885.91	4,808.82	4,726.75	4,646.40	−239.51
Nonroad	10,953.68	7,146.72	4,961.21	3,544.70	−7,408.98
On-road	21,494.74	12,259.66	9,752.70	7,245.74	−14,249.00
Total	50,777.76	37,348.08	32,487.49	28,399.04	−22,378.72

TABLE 8—COMPARISON OF 2008, 2015, 2020, AND 2025 DIRECT $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA

Sector	Direct $PM_{2.5}$				
	2008	2015	2020	2025	Net change 2008–2025
Point	843.05	822.74	806.17	790.01	−53.04
EGU	1,966.49	2,567.84	2,567.83	2,567.81	601.32
Area	85.36	81.77	78.97	76.30	−9.06

[4] MOVES2010a is EPA's most recent model for estimating on-road mobile source emissions. MOVES was officially released for use in SIPs and regional transportation conformity determinations on March 2, 2010, at 75 FR 9411.

TABLE 8—COMPARISON OF 2008, 2015, 2020, AND 2025 DIRECT $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA—Continued

Sector	Direct $PM_{2.5}$				
	2008	2015	2020	2025	Net change 2008–2025
Nonroad	805.42	537.76	384.01	281.52	−523.90
On-road	403.67	289.67	275.11	260.54	−143.13
Total	4,103.99	4,299.78	4,112.09	3,976.18	−127.81

TABLE 9—COMPARISON OF 2008, 2015, 2020, AND 2025 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE INDIANAPOLIS AREA

Sector	SO_2				
	2008	2015	2020	2025	Net change 2008–2025
Point	2,415.94	1,631.65	1,604.91	1,578.72	−837.22
EGU	38,027.05	28,314.66	28,314.44	28,314.22	−9,712.83
Area	1,830.02	1,778.03	1,731.62	1,686.72	−143.30
Nonroad	576.13	165.61	89.31	56.66	−519.47
On-road	653.54	498.20	531.68	565.17	−88.37
Total	43,502.68	32,388.15	32,271.96	32,201.49	−11,301.19

Table 7 shows that the NO_X emissions in the Indianapolis area are 22,378.72 tpy less in 2025, the out-year of the maintenance plan, than in attainment year 2008. Table 8 shows that direct $PM_{2.5}$ emissions are 127.81 tpy lower in 2025 than in 2008. Table 9 shows that SO_2 emissions are 11,301.19 tpy lower in 2025 than in 2008.

For the interim years of 2015 and 2020, however, in conjunction with the projections for dramatic declines in SO_2 and NO_X emissions in the Indianapolis area, the maintenance plan shows an increase in $PM_{2.5}$ emissions. Therefore, further evaluation is needed to judge whether the increase in $PM_{2.5}$ emissions, in combination with the decreases in SO_2 and NO_X emissions, is likely to provide for maintenance of the standard during the interim period.

Each of these pollutants is characterized by a different relationship between emissions and air quality. Therefore, simply summing up the emissions of these various pollutants does not provide a meaningful indicator of the combined air quality impact of these emission changes. Instead, a more appropriate indicator is the percentage change in emissions for each emitted pollutant, weighted according to the air quality impact for each.

For this purpose, EPA examined speciation data available from its Air Explorer Web site for 2007–2009 for the Indianapolis area. These data suggest that $PM_{2.5}$ in the Indianapolis area consists of approximately 47 percent sulfate, 12 percent nitrate, 34 percent organic particulate, 4 percent miscellaneous inorganic particulate (sometime labeled ''crustal particles''), and 3 percent other types of particulate matter.

EPA used a conservative approach that assumes that the full ambient concentration of organic particulate matter plus miscellaneous inorganic particulate matter will vary in accordance with changes in total nonattainment area emissions of directly emitted $PM_{2.5}$. This analysis thus assumes that the entirety of this component of ambient $PM_{2.5}$ will increase by the 5 percent that Indiana's maintenance plan projects that directly emitted $PM_{2.5}$ emissions will increase from 2008 to 2015, the year with the greatest estimated emissions of direct $PM_{2.5}$. In this analysis, the baseline concentration is assumed to be 14.3 $\mu g/m^3$ (the design value for the 2007–2009 time period), of which directly emitted $PM_{2.5}$ is estimated to comprise 38 percent (34 plus 4), or 5.4 $\mu g/m^3$. EPA's assessment assumes that the 5 percent increase in direct $PM_{2.5}$ emissions from 2008 to 2015, the year with the highest projected levels of directly emitted $PM_{2.5}$, will cause a corresponding increase in ambient concentrations of $PM_{2.5}$, which would suggest an increase in the concentration of this component by 0.3 $\mu g/m^3$. However, EPA believes that this potential increase will be fully compensated by much greater decreases in sulfate and nitrate concentrations.

Determining the precise levels of decrease in sulfate and nitrate concentrations is a complex task requiring consideration of emission reductions not only in the Indianapolis area but also in many other parts of the Eastern United States. Nevertheless, sulfates and nitrates comprise 47 percent and 12 percent of the $PM_{2.5}$ in the Indianapolis area, respectively, and both are projected to decrease by 26 percent over this same 2008–2015 time period. Further, as shown in table 10 below, emissions of sulfates and nitrates from power plants in states impacting the Indianapolis area are projected to decrease by 66 percent and 47 percent, respectively. Therefore, the 0.3 $\mu g/m^3$ increase associated with directly emitted $PM_{2.5}$ would be expected to be more than offset by decreases in monitored concentrations associated with decreases in sulfates and nitrates. That is, EPA expects that the temporary minimal increase in direct emissions of $PM_{2.5}$ in the Indianapolis area will not prevent the area from maintaining the standard.

Because the $PM_{2.5}$ concentrations in the Indianapolis area are significantly impacted by the transport of sulfates and nitrates, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants. Table 10, below, compares statewide EGU emissions data for 2008 and 2014. Emissions for 2008 reflect actual emissions data compiled by EPA's Clean Air Markets Division reflecting reductions implemented under CAIR.

2014 emissions reflect EPA's projections of emissions expected under the CSAPR as shown at *http://epa.gov/crossstaterule/pdfs/EmissionsSummaries.xlsx*.

TABLE 10—COMPARISON OF 2008 AND 2014 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE INDIANAPOLIS AREA

State	NO_X			SO_2		
	2008	2014	Net change 2002–2014	2008	2014	Net change 2002–2014
Alabama	112,625	69,192	−43,433	448,248	173,566	−274,682
Illinois	119,930	49,162	−70,768	257,357	132,647	−124,710
Indiana	190,092	110,740	−79,352	565,459	195,046	−370,413
Iowa	49,023	42,231	−6,792	127,847	83,827	−44,020
Kentucky	157,903	76,088	−81,815	344,356	116,927	−227,429
Michigan	107,624	60,907	−46,717	326,501	162,632	−163,869
Missouri	88,742	52,103	−36,639	258,269	186,899	−71,370
Ohio	235,049	89,753	−145,296	709,444	178,975	−530,469
Pennsylvania	183,658	118,981	−64,677	831,915	125,545	−706,370
Tennessee	85,641	20,512	−65,129	208,069	64,721	−143,348
West Virginia	99,484	53,975	−45,509	301,574	84,344	−217,230
Wisconsin	47,794	33,537	−14,257	129,694	50,137	−79,557
Total	1,477,564	777,181	−700,383	4,508,733	1,555,266	−2,953,467

Table 10 shows that NO_X emissions from EGUs are projected to decrease by 700,383 tpy from 2008 to 2014 in states impacting the Indianapolis area. Over that same time period, SO_2 emissions from EGUs are projected to decrease by 2,953,467 tpy in states impacting the Indianapolis area.

Based on the information summarized above, Indiana has adequately demonstrated maintenance of the $PM_{2.5}$ standard in this area for a period extending in excess of ten years from the date that EPA may be expected to complete rulemaking on the State's redesignation request.

d. Monitoring Network

Indiana currently operates three monitors for purposes of determining attainment with the 1997 annual $PM_{2.5}$ standard in the Indianapolis area. Indiana has committed to continue to operate and maintain these monitors and will consult with EPA prior to making any changes to the existing monitoring network. IDEM remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the annual $PM_{2.5}$ NAAQS in the Indianapolis area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Indiana's plan for verifying continued attainment of the annual $PM_{2.5}$ standard in the Indianapolis area consists of continued ambient $PM_{2.5}$ monitoring in accordance with the requirements of 40 CFR part 58. IDEM will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (codified at 40 CFR 51 Subpart A) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for the Indianapolis area to address possible future annual $PM_{2.5}$ air quality problems. Under Indiana's plan, if a violation of the 1997 annual $PM_{2.5}$ standard occurs, Indiana will implement an ''Action Level Response'' to evaluate what measures are warranted to address the violation, committing to implement one or more measures from a list of candidate measures given in the plan. Indiana's candidate contingency measures include the following:

i. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

ii. NO_X or SO_2 controls on new minor sources;

iii. Wood stove change out program;

iv. Idle restrictions;

v. Broader geographic applicability of existing measures; and

vi. One or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide precursor emissions.

Under Indiana's plan, control measures are to be adopted and implemented within 18 months from the end of the year in which air quality triggering the Action Level Response occurs. Indiana further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Indiana commits to take appropriate steps to avoid a violation if possible. EPA believes that Indiana's contingency plan satisfies the pertinent requirements of section 175A(d).

g. Provisions for Future Updates of the Annual $PM_{2.5}$ Maintenance Plan

As required by section 175A(b) of the CAA, IDEM commits to submit to EPA an updated maintenance plan eight years after redesignation of the Indianapolis area to attainment of the

1997 annual $PM_{2.5}$ standard to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Indiana has committed to retain the control measures contained in the SIP prior to redesignation, and to submit to EPA for approval as a SIP revision, any changes to its rules or emission limits applicable to SO_2, NO_X, or direct $PM_{2.5}$ sources as required for maintenance of the annual $PM_{2.5}$ standard in the Indianapolis area.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA is finding that the maintenance plan SIP revision submitted by Indiana for the Indianapolis area meets the requirements of section 175A of the CAA.

B. Adequacy of Indiana's MVEBs

1. How are MVEBs developed and what are the MVEBs for the Indianapolis area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for $PM_{2.5}$ nonattainment areas and for areas seeking redesignations to attainment of the $PM_{2.5}$ standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform with the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find ''adequate'' or approve for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plan, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual $PM_{2.5}$ standard.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plan submitted by Indiana for the Indianapolis area contains new primary $PM_{2.5}$ and NO_X MVEBs for the area for the years 2015 and 2025. IDEM has determined the 2015 MVEBs for the Indianapolis area to be 353.40 tpy for primary $PM_{2.5}$ and 14,956.79 tpy for NO_X. IDEM has determined the 2025 MVEBs for the Indianapolis area to be 317.86 tpy for primary $PM_{2.5}$ and 8,839.80 tpy for NO_X. These MVEBs exceed the on-road mobile source primary $PM_{2.5}$ and NO_X emissions projected by IDEM for 2015 and 2025, as summarized in table 11 below. IDEM decided to include ''safety margins'' as provided for in 40 CFR 93.124(a) (described further below) of 63.73 tpy and 57.32 tpy for primary $PM_{2.5}$ and 2,697.13 tpy and 1,594.06 tpy for NO_X in the 2015 and 2025 MVEBs, respectively, to provide for on-road mobile source growth. Indiana did not provide emission budgets for SO_2, VOCs, and ammonia because it concluded, consistent with EPA's presumptions regarding these precursors, that emissions of these precursors from motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

The availability of the SIP submission with these 2015 and 2025 MVEBs was announced for public comment on EPA's Adequacy Web site on July 19, 2011, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2015 and 2025 MVEBs for the Indianapolis area closed on August 18, 2011. No adverse comments on the submittal were received during the adequacy comment period.

TABLE 11—ON-ROAD MOBILE SOURCE EMISSIONS ESTIMATES AND BUDGETS

[tpy]

	NO_X		$PM_{2.5}$	
	Emissions estimate	Budget	Emissions estimate	Budget
2008	21,494.74		403.67	
2015	12,259.66	14,956.79	289.67	353.40
2025	7,245.74	8,839.80	260.54	317.86

In the Indianapolis area, the motor vehicle budgets and motor vehicle emission projections for both NO_X and primary $PM_{2.5}$ are lower than base year levels, but the overall emissions of primary $PM_{2.5}$ summed across all source types is projected to increase in 2015. This requires further examination of the question of whether an increase in overall primary $PM_{2.5}$ emissions by the amounts requested by Indiana as safety margins would still provide for maintenance of the $PM_{2.5}$ standard.

The discussion of the maintenance plan above describes EPA's rationale for believing that the impact of the projected increase in total primary $PM_{2.5}$ emissions in 2015 will be more than compensated for by the projected decreases in overall emissions of SO_2 and NO_X. EPA examined whether the same conclusion would apply if the Indianapolis area used the entire safety margin in 2015, *i.e.,* if mobile source $PM_{2.5}$ emissions reached the full level of the $PM_{2.5}$ MVEB for 2015. Assuming mobile source $PM_{2.5}$ emissions of 353.40 tpy, the level of the 2015 $PM_{2.5}$ MVEB, total direct $PM_{2.5}$ emissions in 2015 are estimated to be 4,363.51, a 6 percent increase over 2008 $PM_{2.5}$ emissions. Applying a 6 percent increase to 5.4 $\mu g/m^3$, the baseline ambient $PM_{2.5}$ concentration attributable to direct $PM_{2.5}$ emissions, the expected impact of the overall $PM_{2.5}$ emissions increase still rounds to 0.3 $\mu g/m^3$, which EPA again holds is more than compensated for by the decrease in sulfate and nitrate concentrations resulting from reductions in SO_2 and NO_X emissions, as explained above. Therefore, EPA concludes that the submitted budgets, including the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the $PM_{2.5}$ standard.

EPA has reviewed the submitted budgets for 2015 and 2025 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the entire maintenance plan for the Indianapolis area. Based on the results of this review of the budgets and the maintenance plan EPA is approving the 2015 and 2025 direct $PM_{2.5}$ and NO_X budgets including the requested safety margins for the Indianapolis area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Indianapolis area, because EPA has determined that the area can maintain attainment of the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking, November 28, 2011. (40 CFR 93.118(f)(iii))

The budgets that Indiana submitted were calculated using the MOBILE6.2 motor vehicle emissions model. EPA is approving the conformity budgets calculated using this model because this model was the most current model available at the time Indiana was performing its analysis. As discussed in section IV.A.4.c. above, EPA has issued an updated motor vehicle emissions model known as MOVES. In its announcement of this model, EPA established a two-year grace period that allows for continued use of MOBILE6.2 in transportation conformity determinations for transportation plans and TIPs (extending to March 2, 2012), after which states and metropolitan planning organizations (MPOs) (other than California) must use MOVES for transportation plan and TIP conformity determinations. (See 75 FR 9411, March 2, 2010.)

Additional information on the use of MOVES in SIPs and conformity determinations can be found in the December 2009 MOVES Guidance. During the conformity grace period, the State and MPO should use the interagency consultation process to examine how MOVES will impact their future transportation plan and TIP conformity determinations, including regional emissions analyses. For example, an increase in emission estimates due to the use of MOVES may affect an area's ability to demonstrate conformity for its transportation plan and/or TIP. Therefore, State and local planners should carefully consider whether the SIP and motor vehicle emissions budget(s), transportation plans, and TIPs should be revised with MOVES before the end of the conformity grace period, since doing so may be necessary to ensure conformity determinations in the future.

We would expect that states and MPOs would work closely with EPA and the local Federal Highway Administration and Federal Transit Administration offices to determine an appropriate course of action to address this type of situation if it is expected to occur. If Indiana chooses to revise the Indianapolis maintenance plan, it should consult Question 7 of the December 2009 MOVES guidance for information on requirements related to such revisions.

2. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in table 7, NO_X emissions in the Indianapolis area are projected to have safety margins of 13,429.68 tpy and 22,378.72 tpy in 2015 and 2025, respectively (the difference between the attainment year, 2008, emissions and the projected 2015 and 2025 emissions for all sources in the Indianapolis area). Table 8 shows direct $PM_{2.5}$ emissions in the Indianapolis area are projected to have a safety margin of 127.81 tpy in 2025. Table 9 shows SO_2 emissions in the Indianapolis area are projected to have safety margins of 11,114.53 tpy and 11,301.19 tpy in 2015 and 2025, respectively. Even if emissions reached the full level of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

The transportation conformity rule allows areas to allocate all or a portion of a ''safety margin'' to the area's motor vehicle emissions budgets. (40 CFR 92.124(a)) The MVEBs requested by IDEM contain NO_X safety margins for mobile sources in 2015 and 2025 and $PM_{2.5}$ safety margins for mobile sources in 2025 smaller than the allowable safety margins reflected in the total emissions for the Indianapolis area. The State is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State has submitted MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2025 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the $PM_{2.5}$ maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

Projected direct $PM_{2.5}$ emissions in 2015 exceed 2008 emission levels, and IDEM has included a mobile safety margin of 63.73 tpy in the 2015 $PM_{2.5}$ MVEB. However, as discussed above, EPA holds that the impact of the $PM_{2.5}$ emissions increase is more than compensated by decreases in sulfate and nitrate concentrations resulting from reductions in SO_2 and NO_X emissions. Therefore, EPA concludes that the requested budgets, including the requested safety margins, provide for a

quantity of mobile source emissions that would be expected to maintain the $PM_{2.5}$ standard.

C. 2006 Comprehensive Emissions Inventory

As discussed above in section IV.A.2.a.ii., section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate and current emissions inventory. IDEM submitted a 2006 base year emissions inventory that meets this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources.

For the point source sector, EGU SO_2 and NO_X emissions were derived from EPA's Clean Air Market's database. All other point source emissions were obtained from Indiana's source facility emissions reporting.

Area source emissions were extrapolated from Indiana's 2005 periodic emissions inventory. Source growth factors were supplied by LADCO.

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 NEI. Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads, which were not adequately addressed in EPA's 2005 NEI.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOBILE6.2.

Note that all emissions discussed below were documented in appendices B through E of Indiana's May 31, 2011, redesignation request submittal. EPA has reviewed Indiana's documentation of the emissions inventory techniques and data sources used for the derivation of the 2006 emissions estimates and has found that Indiana has thoroughly documented the derivation of these emissions inventories.

In the May 31, 2011, submittal, IDEM states that the 2006 emissions inventory (and the 2008 attainment year emissions inventory) are currently the most complete emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors in the Indianapolis area. We also conclude that the 2006 emissions inventory is complete and is as accurate as possible given the input data available to the State. Therefore, we are approving the 2006 $PM_{2.5}$ emissions inventory for the Indianapolis area as meeting the requirement of section 172(c)(3) of the CAA.

TABLE 12—INDIANAPOLIS AREA NO_X, DIRECT $PM_{2.5}$, AND SO_2 EMISSIONS (TPY) FOR 2006 BY SOURCE SECTOR

Sector	NO_X	Direct $PM_{2.5}$	SO_2
Point	6,035.88	843.43	3,919.71
EGU	7,820.39	763.74	57,451.29
Area	4,841.01	85.70	1,820.79
Nonroad	12,261.91	901.58	1,146.90
On-road	22,734.38	416.63	842.20
Total	53,693.57	3,011.08	65,180.89

V. Summary of Actions

EPA is making a determination that the Indianapolis area is attaining the 1997 annual $PM_{2.5}$ standard and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus approving the request from IDEM to change the legal designation of the Indianapolis area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving Indiana's $PM_{2.5}$ maintenance plan for the Indianapolis area as a revision to the Indiana SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving 2006 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Indiana's May 31, 2011, $PM_{2.5}$ redesignation request supplemental submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Indianapolis area. These MVEBs will be used in future transportation conformity analyses for the area.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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

• Do 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.

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**. These actions are not ''major rules'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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 these direct final rules and address the comment in the proposed rulemaking. These actions may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: September 12, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraphs (v)(2) and (w)(2) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(v) * * *

(2) The Indianapolis area (Hamilton, Hendricks, Johnson, Marion and Morgan Counties), as submitted on October 20, 2009, and supplemented it on May 31, 2011. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Indianapolis area of 353.40 tpy for primary $PM_{2.5}$ and 14,956.79 tpy for NO_X and 2025 motor vehicle emissions budgets of 317.86 tpy for primary $PM_{2.5}$ and 8,839.80 tpy for NO_X.

(w) * * *

(2) Indiana's 2006 NO_X, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Indianapolis area.

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.315 is amended by revising the entry for Indianapolis, IN in the table entitled ''Indiana $PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Indianapolis, IN:	11/28/11	Attainment.
Hamilton County.		
Hendricks County.		
Johnson County.		
Marion County.		
Morgan County.		
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2011–24373 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2008–0396; FRL–9469–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Evansville Area to Attainment of the Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 3, 2008, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA to approve the redesignation of the Evansville, Indiana nonattainment area to attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) standard. This request also included emissions information and related material to address related State Implementation Plan (SIP) requirements. On May 23, 2011, EPA proposed to approve the SIP submittals and to act as requested to redesignate the Evansville $PM_{2.5}$ nonattainment area to attainment. The submittals included emissions inventories, a maintenance plan for the Evansville area for the 1997 annual $PM_{2.5}$ standard and accompanying motor vehicle emissions budgets. EPA received one set of adverse comments and one set of supportive comments. After review and consideration of these comments and of the emission reduction mandates of the final Cross-State Air Pollution Rule promulgated recently, EPA is taking final action to approve the requested SIP revisions and to redesignate the Evansville $PM_{2.5}$ nonattainment area to attainment for the annual 1997 $PM_{2.5}$ standard.

DATES: This final rule is effective on October 27, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2008–0396. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. What actions did EPA propose?
II. What is the background for these actions?
III. What comments did EPA receive and what are EPA's responses?
IV. How does the CSAPR compare to the proposed Transport Rule as it affects Evansville area air quality?
V. What is EPA's final analysis of Indiana's request?
VI. Statutory and Executive Order Reviews

I. What actions did EPA propose?

Indiana submitted a request for redesignation of the Evansville area to attainment for the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) on April 3, 2008, supplemented by additional subsequent submittals on various dates including submittal of a replacement maintenance plan on April 8, 2011. On May 23, 2011, at 76 FR 29695, EPA published a notice of proposed rulemaking addressing these submittals. In the May 23 action, EPA first referred to EPA's prior final determination that the Evansville area had attained the 1997 annual $PM_{2.5}$ NAAQS (published November 27, 2009, at 74 FR 62243), and proposed to determine that the area continues to attain that standard. Second, EPA proposed to approve Indiana's 1997 annual $PM_{2.5}$ maintenance plan for the Evansville area as a revision to the Indiana SIP, subject to the proviso that EPA promulgate a final Transport Rule requiring power plant emission reductions substantially equivalent for purposes of maintaining the $PM_{2.5}$ standard in Evansville to those proposed in EPA's Transport Rule proposal. Third, EPA proposed to approve the 2005 emission inventory in Indiana's maintenance plan as satisfying the requirement of section 172(c)(3) for a comprehensive and accurate emissions inventory. Fourth, EPA proposed to find that, subject to final approval of the emissions inventory and the proviso set forth above with respect to EPA's proposed Transport Rule, Indiana meets the requirements for redesignation of the Evansville area to attainment of the 1997 $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the Clean Air Act. Finally, EPA proposed to approve the 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the Evansville area into the Indiana SIP. These proposals were generally contingent on EPA finalizing a Transport Rule which, for purposes of this action, was substantially equivalent to the Transport Rule that EPA proposed on August 2, 2010.

II. What is the background for these actions?

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average standard at 15 $\mu g/m^3$ but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005, at 70 FR 944, as supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Evansville area as nonattainment for the 1997 $PM_{2.5}$ air quality standards. In that action, EPA defined the Evansville nonattainment area to include the entirety of Dubois, Vanderburgh, and Warrick Counties and portions of three other counties, specifically including Montgomery Township in Gibson County, Ohio Township in Spencer County, and Washington Township in Pike County. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard set in 2006, designating the Evansville area as attaining this standard. In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Evansville area remained designated nonattainment for the 1997 annual $PM_{2.5}$ standard, but was designated attainment for the 1997 24-hour standard. Thus today's action does not address attainment of either the 1997 or the 2006 24-hour standards.

In response to legal challenges of the annual standard promulgated in 2006, the DC Circuit remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard. Since the Evansville area is designated nonattainment only for the annual standard promulgated in 1997, today's action addresses redesignation to attainment only for this standard.

The notice of proposed rulemaking identifies multiple submittals that Indiana provided in support of its request for redesignation of the Evansville area. Given the significance of sulfates and nitrates in the Evansville area, several of these submittals focused on the sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emissions from power plants and the regulations governing these emissions.

EPA proposed the Clean Air Interstate Rule (CAIR) on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and improve air quality in many areas across the eastern part of the United States. However, as a result of rulings by the Court of Appeals for the District of Columbia Circuit, the power plant emission reductions that have resulted from the development, promulgation, and implementation of CAIR, and the associated air quality improvement that has occurred in the Evansville area and elsewhere, cannot be considered permanent.

On August 2, 2010, EPA published its proposal of the Transport Rule, to address interstate transport of emissions with respect to the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS, to replace CAIR. (*See* 75 FR 45210.) In that rulemaking action, EPA proposed to require substantial reductions of SO_2 and NO_X emissions from electric generating units (egus) across most of the Eastern United States. Indeed, EPA's rulemaking notice proposing the Evansville redesignation expressed the view that the Transport Rule as proposed would require reductions of these emissions to levels well below the levels that led to attainment in the Evansville area. On this basis, EPA proposed to conclude that EPA's promulgation of a final Transport Rule would make permanent and enforceable the power plant emission reductions to which Evansville's air quality improvement were attributable, provided the final Transport Rule was substantially equivalent to the proposed rule for purposes of maintaining the $PM_{2.5}$ air quality standard in the Evansville area.

Final rulemaking for the Transport Rule, also known as the Cross-State Air Pollution Rule (CSAPR), was published on August 8, 2011, at 76 FR 48208. The discussion below addresses the question of whether CSAPR may be considered to be substantially equivalent to the proposed Transport Rule for purposes of maintaining the standard in the Evansville area.

III. What comments did EPA receive and what are EPA's responses?

EPA received two sets of comments on its proposal to redesignate Evansville to attainment for $PM_{2.5}$. John Blair, on behalf of Valley Watch (''Valley Watch''), opposed the redesignation, and Joanne Alexandrovich, on behalf of the Vanderburgh County Health Department (''Vanderburgh County''), supported the redesignation. The following discussion summarizes the comments and provides EPA's responses.

Comment: Valley Watch states: ''Monitors in the region have shown levels of $PM_{2.5}$ to be 'moderate' on many more days than they have been in the range considered 'good' by EPA in 2011.''

Response: The air quality index that is cited by the commenter is designed to characterize 24-hour average concentrations in terms such as ''good'' or ''moderate'' levels. This index is not designed to report the 1997 annual $PM_{2.5}$ values that are at issue in this redesignation, and is in fact a weak indicator of annual average concentrations. Furthermore, the air quality index that is the focus of the comment often relies on reporting from continuous instruments that, although capable of providing air quality information on a timely basis, may provide less reliable air quality information. For these reasons, and given the imprecise, non-quantitative nature of the information cited by the commenter, we conclude that it is not pertinent to the determination addressed in this rulemaking—whether the Evansville area is meeting the 1997 annual average $PM_{2.5}$.

As we have previously shown, based on comprehensive and quality-assured air monitoring data presented in the proposed and final determinations of attainment and in the proposed redesignation notice, the Evansville area has been meeting the 1997 annual average $PM_{2.5}$ standard since 2004 to 2006, and continues to meet that standard. The most recent air quality data available for 2011 is consistent with continued attainment. The information regarding the 24-hour values referred to by the commenter does not bear upon nor detract from EPA's determinations regarding the area's longstanding attainment of the 1997 annual standard.

Comment: Valley Watch claims that the recent air quality improvement ''is more likely due to the fact that overall energy production in the region has been about 25% lower than previous years due to the deep recession * * * rather than permanent and enforceable emission limits.''

Response: EPA disagrees with the commenter's opinion regarding the cause of the Evansville area's attainment of the standard. The commenter is evidently referring to a recession that the National Bureau of Economic Research found to extend from December 2007 to June 2009. However, EPA determined that the Evansville area attained the standard before this period, as established by air quality data for 2004 to 2006 and for 2005 to 2007. As shown in Table 1 of the notice of proposed rulemaking (see 76 FR 29698, May 23, 2011), data for 2010 indicate that the area continues to attain the standard by a substantial margin, notwithstanding some economic recovery. Thus, as set forth in the proposal and in today's action, EPA continues to believe that the air quality improvement is largely attributable to substantial reductions in power plant emissions. CAIR mandated substantial reductions in power plant emissions. These requirements address emissions through 2011 and EPA has now promulgated CSAPR, which requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA has determined that the emission reductions that led to attainment in the Evansville area can now be considered permanent and enforceable and that the requirement of Clean Air Act section 107(d)(3)(E)(iii) has now been met.

Comment: Valley Watch contends that some of the numerous power plants in the region near Evansville have indeed installed scrubbers for the control of SO_2, ''but those reductions are not

required by permanent and enforceable emission limits. The reductions are mainly undertaken to satisfy cap and trade programs like Clean Air Interstate Rule.'' Valley Watch asserts, as a result, that the sources may choose to purchase credits and emit more.

Furthermore, Valley Watch notes that ''CAIR was overturned by the DC Court of Appeals'', and so contends that the reductions that it cause cannot be considered permanent or enforceable. It also asserts that the ''D.C. Circuit already held that CAIR does not require enforceable reductions in any particular state.''

Response: While EPA views CAIR as likely one of the motivations for the power plant emission reductions that it considers the primary cause for the air quality improvement in the Evansville area, EPA is not relying solely on CAIR as the basis for redesignating the Evansville area to attainment. As explained in the notice of proposed rulemaking, CAIR was ultimately remanded to EPA without vacatur. EPA has now responded to that remand with the promulgation of CSAPR. CAIR limits emissions through the end of the 2011 control periods, and the new Transport Rule limits emissions in 2012 and beyond. With these regulations, EPA is requiring a level of power plant emission control that exceeds the level of reductions that resulted in attainment in the Evansville area.

Several factors contribute to EPA's expectation that CSAPR will provide even better air quality in the Evansville area than has occurred to date. First, given the mandates under CSAPR, any utility that has already spent the hundreds of millions of dollars to install scrubbers will clearly find continued effective operation of these scrubbers to be far more cost-effective than disregarding this investment and either spending more hundreds of millions of dollars installing replacement scrubbers elsewhere or purchasing credits at a price equivalent to spending those hundreds of millions of dollars. In short, any utility in a state covered by CSAPR provisions related to $PM_{2.5}$ that has installed scrubbers is almost certain under CSAPR to retain the scrubbers and operate them effectively. Second, any action by a utility that increases its emissions, requiring the purchase of allowances, thereby necessitates a corresponding emission reduction by the utility that sells the allowances. Given the regional nature of particulate matter, this corresponding emission reduction will have an air quality benefit that will compensate at least in part for the impact of any emission increase from Evansville area utilities. Third, in response to the opinion of the Court of Appeals for the District of Columbia Circuit, CSAPR trading programs include assurance provisions to ensure that the necessary emission reductions occur within each covered state.

Comment: Valley Watch argues that, while the Transport Rule ''is supposed to be finalized in a matter of weeks,'' EPA has encountered delays in several of its rulemakings, and EPA may not rely on a rule that has not yet been promulgated.

Response: EPA stated in its notice of proposed rulemaking that it would not publish final rulemaking until the Transport Rule was made final. CSAPR has now been promulgated. EPA notes that, along with promulgation of CSAPR, EPA issued a supplemental notice of proposed rulemaking to include six additional states in the summer season NO_X trading program. (See 76 FR 40662, published July 11, 2011.) EPA is not relying, in this redesignation, on reductions that would be achieved if that supplemental proposal is finalized as proposed.

Comment: Valley Watch states that ''EPA has offered no analysis, under Clean Air Act 110(l), of what impact this redesignation would have on compliance with the 1997 and 2008 ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS and the 2010 1-hour SO_2 and NO_X NAAQS.''

Response: This redesignation does not relax any existing control requirements, nor does it affect any existing control requirements. On this basis, EPA concludes that this redesignation will not interfere with attainment or maintenance of any of these air quality standards.

Valley Watch attached comments dated March 27, 2008, that it submitted to Indiana during the State's comment period on a State proposal to request redesignation. Since these comments were summarized in Indiana's submittal, EPA has already considered them as part of that review process. Nevertheless, since the commenter has resubmitted these comments, EPA will provide responses to those comments as well.

Comment: Valley Watch commented that the air quality standard of 15 $\mu g/m^3$ is not protective of community health.

Response: Comments regarding the appropriateness or adequacy of the 1997 $PM_{2.5}$ air quality standard are not germane to this rulemaking. At issue here is whether the Evansville area meets the criteria in section 107(d)(3)(E) for being redesignated as attaining the 1997 annual average $PM_{2.5}$ air quality standard that was established in a prior rulemaking that cannot be challenged here.

Comment: Valley Watch reviews emission controls by power plants in the Evansville area. It claims that one plant (Gibson Station) is controlling only about 50 percent of the SO_2 emissions from three of its five units, and that another plant (Rockport Station) has no plans to control either NO_X or SO_2 emissions until at least 2018.

Response: Data available on the Clean Air Markets public data repository show that emissions for all five units at Gibson Station declined by well more than 50 percent from 2002 to 2010, adding up to a reduction by over 80 percent. The dates when the commenter expects control of Rockport Station are similar to the dates by which a federal consent decree requires control, though other requirements may result in earlier installation of these controls. However, the commenter does not explain the relevance of these comments.

The relevant issues for this rulemaking are whether current emission control levels suffice for the area to attain the standard, whether the air quality improvement leading to attainment is attributable to permanent and enforceable emission reductions, and whether the area is assured of continuing to attain the standard. Redesignation is not contingent on achieving all possible emission controls. The emission controls that have occurred to date have sufficed for the Evansville area to attain the standard, EPA finds that the air quality improvement may be attributed to a permanent and enforceable set of emission reductions, and Indiana has demonstrated that sufficient control requirements are in place to assure that the Evansville area will maintain the standard.

Comment: Valley Watch states that Indiana should not use data from 2004 to 2006 and should instead wait to collect another year of data to see if air quality in Evansville is ''clean and healthy.'' The commenter claims that 13 percent of the data is missing in 2006 and 16 percent is missing in 2007, ''mostly during periods when high levels of fine particles are historically formed.'' Valley Watch states that, ''if our design value was approaching the level recommended by [the Clean Air Science Advisory Committee] of 14 $\mu g/m^3$, * * * data missing on days of high levels would not be such an issue.''

Response: EPA has examined and evaluated quality-assured data for more than four years beyond 2006 and concludes that the area continues to attain the standard. As a general matter,

under 40 CFR part 50 Appendix N, data sets that include at least 75 percent of the scheduled data are deemed complete and may be considered to provide an adequate representation of $PM_{2.5}$ concentrations. This topic was addressed specifically for the Evansville area in EPA's determination of attainment and in the proposed redesignation. Furthermore, Valley Watch provided no analysis in support of its allegation that the data are unrepresentative. Data meeting the quality assurance requirements in EPA's regulations show that the area has been continuously in attainment with the 1997 annual average $PM_{2.5}$ standard since 2006. The design value for the area is now well below 14 $\mu g/m^3$, so that Valley Watch's comment suggests that it must now concede that differences between actual data capture rates in the area and 100 percent data capture may be considered insignificant.

Comment: Valley Watch includes critical comments questioning the integrity of certain State and local officials.

Response: The comments do not raise issues relevant to redesignation, and are not germane to this rulemaking.

Comment: Vanderburgh County comments that it believes the State of Indiana has submitted a redesignation package that ''meets all statutory, regulatory, and guidance requirements'' for Evansville to be redesignated to attainment.

Response: EPA agrees.

Comment: Vanderburgh County contends that ''redesignation should not be contingent on final promulgation of the [Transport Rule].'' The commenter adds that the area was meeting the air quality standard by 2006, and disagrees with EPA's statement ''that air quality monitoring between 2004 and 2006 'would reflect the benefits from EPA's development, proposal, and promulgation of CAIR.' '' The commenter provides emissions data for power plants within 100 kilometers of Evansville and elsewhere in Indiana and Kentucky, to support a claim that attainment cannot be attributed to CAIR. The emissions data, derived from the EPA Clean Air Markets Web site from 1995 to 2010, suggest that regional power plant emissions of SO_2 were relatively constant from 2001 to 2006 and only declined significantly thereafter. The commenter believes that the emissions data indicate that NO_X emissions steadily and significantly declined from 1998 to 2004 and then held relatively steady until declining again starting in 2009.

The commenter agrees that power plant emissions dominate air quality in the Evansville area. Indeed, the commenter finds that ''$PM_{2.5}$ annual design values are highly correlated with the SO_2 and NO_X emissions from coal fired EGUs located within 100 km of Evansville (R^2 coefficients ≈ 0.80).''

However, the commenter expresses doubt in the view that CAIR caused significant emission reductions by 2006, when the Evansville area came into attainment. The commenter expresses the view that the area's air quality improvement is attributable to power plant emission reductions resulting from the Acid Rain Program.

Response: EPA has now promulgated CSAPR, which limits emissions in the relevant area and will replace CAIR. As explained above, CAIR limits emissions through the end of the 2011 control periods, and CSAPR will limit emission in 2012 and beyond.

The commenter does well to consider power plant emissions data for a region that extends beyond the boundaries of the Evansville nonattainment area. Indeed, EPA's notice of proposed redesignation addressed emissions for 13 states including Indiana, and EPA continues to believe that it is appropriate to examine pertinent emissions trends in this broad area. The trends across this 13-state region are similar to those identified by the commenter in the less broad region.

In conjunction with its Transport Rule rulemaking, EPA conducted an extensive examination of pertinent emissions data and, because the Transport Rule was to replace CAIR, EPA evaluated air quality under a baseline that did not include CAIR. EPA's final Transport Rule analysis, which took into account comments received on the proposal, projected that the Evansville area would attain the annual $PM_{2.5}$ standard in 2012 even in the absence of reductions due solely to CAIR and not required by other Federal or state regulations or consent decrees). EPA did not conduct a direct assessment of whether the Evansville area would have attained in 2004 to 2006 in absence of CAIR, and any extrapolation from EPA's 2012 analysis is complicated by consideration of other emission controls mandated by 2012 (*e.g.,* by the settlement of enforcement cases and the imposition of state mandates) that are independent of CAIR and CSAPR that mostly occurred after Evansville attained the standard. Furthermore, the motivations for power plant emission reductions are difficult to discern. In any case, the promulgation of CSAPR makes it no longer necessary to determine what originally motivated the power plant emission reductions that yielded attainment. The CAIR emission reduction requirements limit emissions through 2011 and EPA has now promulgated CSAPR which requires similar or greater reductions in the relevant areas in 2012 and beyond. In particular, CSAPR requires reduction of these emissions to levels well below the levels that led to attainment of the 1997 annual $PM_{2.5}$ standard in the Evansville area.

EPA and the commenter agree that the air quality improvement is attributable to emission reductions that are enforceable and now permanently required. The requirements of the Acid Rain Program are permanent and enforceable and the requirements of CSAPR, which replaces CAIR and requires equivalent or greater reductions in the relevant areas, are also permanent and enforceable. Thus, the emission reductions that led to attainment in the Evansville area can be said to be permanent and enforceable emission reductions. As noted above, CSAPR, while not requiring identical reductions to CAIR, mandated sufficient reductions in the relevant areas to guarantee that any reductions originally associated with CAIR that may have been necessary for the Evansville area to demonstrate attainment are now permanently required.

IV. How does CSAPR compare to the proposed Transport Rule as it affects Evansville area air quality?

EPA's proposal to redesignate the Evansville area to attainment was contingent in some respects on the final Transport Rule being substantially equivalent to the proposed Transport Rule with respect to air quality in the Evansville area. For example, EPA stated that it proposed to conclude that the air quality could be attributed to permanent and enforceable measures once EPA promulgated the final Transport Rule, provided EPA issued ''final promulgation of a Transport Rule that is substantially equivalent to the proposed rule for purposes of maintaining the standard in the Evansville area''. EPA included a similar proviso in the review of Indiana's maintenance plan. Therefore, the following discussion compares the final against the proposed Transport Rule.

Table 1 shows the proposed and final annual NO_X and annual SO_2 budgets for the 13 states that EPA had proposed to find significantly contribute to or interfere with maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the Evansville area. EPA ultimately did not conclude that these states significantly contribute to, or interfere with, maintenance of

these NAAQS in the Evansville area, because it determined that even in the absence of CAIR, the Evansville area would attain the standard in 2012. Nonetheless, EPA continues to believe that these 13 states are the most relevant with respect to Evansville area air quality.

TABLE 1—SO_2 AND NO_X EMISSION BUDGETS FOR 2012 IN PROPOSED AND FINAL TRANSPORT RULE

[tons]

State	SO_2 Budgets		Annual NO_X Budgets	
	Proposed TR 2012	Final TR 2012	Proposed TR 2012	Final TR 2012
Indiana	400,378	285,424	115,687	109,726
Alabama	161,871	216,033	69,169	72,691
Georgia	233,260	158,527	73,801	62,010
Illinois	208,957	234,889	56,040	47,872
Iowa	94,052	107,085	46,068	38,335
Kentucky	219,549	232,662	74,117	85,086
Michigan	251,337	229,303	64,932	60,193
Missouri	203,689	207,466	57,681	52,374
Ohio	464,964	310,230	97,313	92,703
Pennsylvania	388,612	278,651	113,903	119,986
Tennessee	100,007	148,150	28,362	35,703
West Virginia	205,422	146,174	51,990	59,472
Wisconsin	96,439	79,480	44,846	31,628
Total	3,028,537	2,634,074	893,909	867,779

This comparison supports EPA's conclusion that the final Transport Rule requires power plant emission reductions that are, for purposes of maintaining the $PM_{2.5}$ standard in Evansville, at least substantially equivalent to those proposed.

V. What is EPA's final analysis of Indiana's request?

EPA continues to believe that the Evansville area meets the criteria of Clean Air Act section 107(d)(3)(E) for redesignation to attainment for the 1997 annual $PM_{2.5}$ air quality standard. First, EPA has determined that the air quality in the area meets the 1997 annual $PM_{2.5}$ standard. Second, with the approval today of a comprehensive emission inventory (in satisfaction of the requirement in section 172(c)(3)), EPA has fully approved the applicable implementation plan. Third, with the final promulgation of CSAPR, in conjunction with the Federal motor vehicle control program and other emission reductions, EPA believes that the air quality improvement in the Evansville area may be attributed to measures that are permanent and enforceable. Fourth, EPA believes that Indiana has provided a maintenance plan for the $PM_{2.5}$ standard through 2022 that meets the requirements of section 175A. Fifth, EPA believes that Indiana has met all pertinent planning requirements for the Evansville area under section 110 and Part D.

Therefore, EPA is taking several actions. EPA is approving Indiana's $PM_{2.5}$ emission inventory for the Evansville area as meeting the requirements of section 172(c)(3). Pursuant to section 175A, EPA is approving the State's maintenance plan as providing for maintenance through 2022. EPA is redesignating the Evansville area to attainment of the 1997 annual $PM_{2.5}$ air quality standard. Finally, EPA is establishing transportation conformity budgets for the area, specifically budgets for NO_X of 2,628.35 tons per year in 2015 and 1869.84 tons per year in 2022 and budgets for direct emissions of $PM_{2.5}$ of 57.05 tons per year in 2015 and 53.83 tons per year in 2022.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the Clean Air Act for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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

• Do 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: September 12, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraphs (v) and (w) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(v) Approval—The 1997 annual $PM_{2.5}$ maintenance plans for the following areas have been approved:

(1) The Evansville area (Dubois, Vanderburgh, and Warrick Counties, and portions of Gibson, Pike, and Spencer Counties), as submitted on April 8, 2011. The maintenance plan establishes 2015 motor vehicle emission budgets for the Evansville area of 2628.35 tons per year for NO_X and 57.05 tons per year for $PM_{2.5}$, and 2022 motor vehicle emission budgets of 1869.84 tons per year for NO_X and 53.83 tons per year for $PM_{2.5}$.

(2) [Reserved]

(w) Approval—The 1997 annual $PM_{2.5}$ comprehensive emissions inventories for the following areas have been approved:

(1) Indiana's 2005 NO_X, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Evansville area.

(2) [Reserved]

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.315 is amended by revising the entry for ''Evansville, IN'' in the table for Indiana $PM_{2.5}$ (Annual NAAQS) to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation[a]	
	Date[1]	Type
* * * * * * *		
Evansville, IN	10/27/2011	Attainment.
Dubois County.		
Gibson County (part).		
Montgomery Township.		
Pike County (part).		
Washington Township.		
Spencer County (part).		
Ohio Township.		
Vanderburgh County.		
Warrick County.		
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2011–24371 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0417; FRL–9469–4]

RIN 2060–AP99

Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to certain provisions related to the use of best available monitoring methods for the Petroleum and Natural Gas Systems source category of the Greenhouse Gas Reporting Rule. Specifically, EPA is extending the time period during which owners and operators of facilities would be permitted to use best available monitoring methods in 2011, without submitting a request to the Administrator for approval. EPA is also expanding the list of types of emissions sources for which owners and operators are not required to submit a request to the Administrator to use best available monitoring methods during 2011 and extending the deadline by which owners and operators of facilities can request use of best available monitoring methods for beyond 2011.

DATES: This final rule is effective on September 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0417. All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information may not be publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available in hard copy only. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA's Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/subpart/w.html.* To submit a question, select Rule Help Center, followed by ''Contact Us.''

Worldwide Web (WWW). In addition to being available in Docket ID No. EPA–HQ–OAR–2011–0417, following the Administrator's signature, an electronic copy of this final rule will also be available through the WWW on EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). This final rule affects owners or operators of petroleum and natural gas systems. Regulated categories and entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities of which EPA is aware could be potentially affected by the reporting requirements. Other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart W or the relevant criteria in the sections related to petroleum and natural gas systems. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What is the effective date? The final rule is effective on September 30, 2011. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register.** EPA is issuing this final rule under section CAA 307(d)(1), which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making this rule effective on September 30, 2011. Section 5 U.S.C. 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As explained below, EPA finds that there is good cause for this rule to become effective on or before September 30, 2011, even though this will result in an effective date fewer than 30 days from the date of publication in the **Federal Register**.

The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. That purpose, to provide affected parties a reasonable time to adjust to the rule

before it comes into effect, is not necessary in this case, as this final rule avoids the need for affected parties to take action.

Currently, according to the provisions in 76 FR 22825 (April 25, 2011), owners and operators subject to 40 CFR part 98 may take advantage of automatic use of best available monitoring methods (BAMM) for parameters that cannot reasonably be measured according to the monitoring requirements in the rule through September 30, 2011. After September 30, 2011, owners and operators must follow all monitoring and quality assurance (QA) and quality control (QC) procedures in the rule unless the Administrator has approved using BAMM beyond that date. Finalizing this rule by September 30, 2011 enables owners and operators to automatically use BAMM through the end of 2011, without the need to request approval from the Administrator. If EPA were not to finalize this rule by September 30, 2011, owners and operators would have to comply with all monitoring and QA/QC requirements as of October 1, 2011, which is the precise situation that this final rule is trying to avoid. Accordingly, EPA finds good cause exists to make this rule effective on September 30, 2011, consistent with the purposes of 5 U.S.C. 553(d)(3).

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by November 28, 2011. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Acronyms and Abbreviations

The following acronyms and abbreviations are used in this document.

BAMM best available monitoring methods.
CAA Clean Air Act.
CBI confidential business information.
CFR Code of Federal Regulations.
EO Executive Order.
EPA U.S. Environmental Protection Agency.
FR **Federal Register**.
GHG greenhouse gas.
ICR Information Collection Request.
ISO International Organization for Standardization.
INGAA Interstate Natural Gas Association of America (INGAA).
OMB Office of Management and Budget.
RFA Regulatory Flexibility Act.
RIA Regulatory Impact Analysis.
SBA Small Business Administration.
SBREFA Small Business Regulatory Enforcement and Fairness Act.
U.S. United States.
UMRA Unfunded Mandates Reform Act of 1995.
USC United States Code.
WWW World Wide Web.

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I. Background

A. Organization of This Preamble

This preamble consists of four sections. The first section provides a brief history of 40 CFR part 98, subpart W (''subpart W'').

The second section of this preamble summarizes the revisions made to specific requirements for subpart W being incorporated into 40 CFR part 98 by this action. It also describes the major changes made to this source category since proposal and provides a brief summary of significant public comments and EPA's responses. Additional responses to significant comments can be located in the document ''Mandatory Reporting of Greenhouse Gases—Petroleum and Natural Gas Systems, Revisions to Best Available Monitoring Methods: EPA's Response to Public Comments''.

The third section of this preamble provides a statement regarding the economic impacts of the final rule.

Finally, the last section discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on the Final Rule

This action finalizes amendments to best available monitoring method (BAMM) provisions in 40 CFR part 98, subpart W. EPA published Subpart W—Petroleum and Natural Gas Systems of the Greenhouse Gas Reporting Rule on November 30, 2010, 40 CFR part 98, subpart W (75 FR 74458). Included in the final rule were new provisions that were added in response to comments on the proposal (75 FR 18608, April 12, 2010) allowing owners and operators the option of using BAMM for specified parameters in 40 CFR 98.233.

Calculating GHG emissions

Following the publication of subpart W in the **Federal Register**, several industry groups sought reconsideration of several provisions in the final rule, including the provisions allowing BAMM. In a follow up action, EPA granted reconsideration and extended specific BAMM deadlines for 90 days in a rule that was signed on April 20, 2011 (76 FR 22825).

EPA then published a notice of proposed rulemaking to propose extending the time period for which owners and operators of facilities could use BAMM during 2011 without submitting a request to the

Administrator for approval, as well as broadening the emissions sources for which BAMM could be used. EPA also proposed extending the deadline for requesting BAMM for beyond 2011. The proposal was published on June 27, 2011 (76 FR 37300). The public comment period for the proposed rule amendments ended on July 27, 2011. EPA did not receive any requests to hold a public hearing.

C. Legal Authority

EPA is promulgating these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final rule (74 FR 56260, October 30, 2009), CAA section 114 provides EPA broad authority to require the information mandated by Part 98 because such data would inform and are relevant to EPA's obligation to carry out a wide variety of CAA provisions. As discussed in the preamble to the initial proposal (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of process or control equipment, and persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA's legal authority, see the preambles to the proposed and final rule, and Response to Comments Documents.

II. Use of BAMM Under the Petroleum and Natural Gas Systems Source Category

A. Summary of BAMM Provisions Under the Petroleum and Natural Gas Systems Source Category

Subpart W of 40 CFR part 98 includes provisions allowing owners and operators of facilities to use BAMM in lieu of specified data input requirements for determining GHG emissions in certain circumstances for specified emissions sources. Methods that constitute BAMM are: supplier data; monitoring methods currently used by the facility that do not meet the specifications of a relevant subpart; engineering calculations; and/or other company records. When using BAMM, the owner or operator must use the equations and calculation methods set forth in 40 CFR 98.233, but may use BAMM to estimate the parameters in the equations as specified in the rule. Any obligation to report under 30 CFR 250.302 through 304 as applicable by owners or operators of facilities reporting under the offshore petroleum and natural gas production industry segment of subpart W is not affected if such owners or operators choose to use BAMM.

Well-related emissions (40 CFR 98.234(f)(2)). This group of emissions sources includes those well-related data that cannot reasonably be measured according to the monitoring and QA/QC requirements of subpart W, such as well testing, venting, and flaring. Sources that fall in this category may automatically use BAMM for calendar year 2011 without requesting approval from the Administrator.

Specified activity data (40 CFR 98.234(f)(3)). This group includes those activity data that cannot reasonably be obtained according to the monitoring and QA/QC requirements specified in subpart W, such as cumulative hours of venting, days, or times of operation. Sources that fall in this category may automatically use BAMM for calendar year 2011 without requesting approval from the Administrator.

Leak Detection and Measurement (40 CFR 98.234(f)(4)). This group includes those emissions sources that require leak detection and/or measurement such as the measurement of equipment leaks from valves and connectors that cannot reasonably be obtained. Sources that fall in this category may automatically use BAMM for calendar year 2011 without requesting approval from the Administrator.

Additional Sources under 40 CFR 98.234(f)(5)(iv). This category is applicable to emission sources not covered under the previous three categories and includes instances in which the facility owner or operator is facing unique or unusual circumstances, such as data collection methods that do not meet safety regulations, technical infeasibility such as a compressor that would not normally be shut down for maintenance during that calendar year rendering the installation of a port or meter difficult, or requirements that are counter to specific laws or regulations that render owners or operators of the facility unable to meet the requirements of subpart W. These examples are illustrative only; there could be additional circumstances which are unique or unusual under which the source could legitimately use BAMM. Sources that fall in this category may automatically use BAMM for calendar year 2011 without requesting approval from the Administrator.

Best available monitoring methods for use beyond December 31, 2011 for sources in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv). Owners and operators of emission sources covered in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv) may submit a notice of intent to EPA by December 31, 2011 indicating an intent to request BAMM for beyond 2011. Owners and operators who submit a BAMM request consistent with 40 CFR 98.234(f)(8)(ii) by March 30, 2012 who have also submitted a notice of intent by December 31, 2011 will automatically be granted BAMM through June 30, 2012, during which time EPA will review the BAMM request. If the BAMM request is for use of BAMM beyond June 30, 2012 and is approved by the Administrator, owners and operators would be allowed to use BAMM for the time period indicated in the EPA approval letter, but not beyond December 31, 2012 without submitting and obtaining the Administrator's approval of a subsequent request for additional time.

Owners and operators who submit such a notice of intent but do not follow up with a BAMM request by March 30, 2012 are not allowed to use BAMM for 2012. They will have been expected to follow all monitoring and QA/QC requirements in the rule as of January 1, 2012. Although EPA expects that it will be unlikely to be necessary, these owners and operators could still request BAMM for 2013 and beyond according to the procedures outlined in this preamble and rule.

To use BAMM beyond December 31, 2012 (or such other shorter period as provided in an approval letter), or any year thereafter, owners and operators must submit a new request to use BAMM by September 30th of the preceding year or such other time as indicated by an approval letter. The request will be reviewed according to the criteria outlined in 40 CFR 98.234(f)(8), and if the information provided is to the Administrator's satisfaction, approved.

B. Summary of Major Changes and Clarifications Since Proposal

The major changes and clarifications in 40 CFR 98.234(f) since the June 2011 proposal are identified in the following list. For a full description of the rationale for these and any other significant changes to 40 CFR 98.234(f) of subpart W, please see below, as well as the ''Mandatory Reporting of Greenhouse Gases—Petroleum and Natural Gas Systems, Revisions to Best Available Monitoring Method Provisions: EPA's Response to Public Comments''. The changes are organized following the different sections of the subpart W regulatory text.

1. Emission Sources Covered by Best Available Monitoring Method Provisions

• EPA clarified the sources covered by BAMM for Leak Detection and Measurement in 40 CFR 98.234(f)(4) by including the statement that emission sources that can use BAMM are those for which leak detection/or measurement cannot reasonably be obtained.

• EPA clarified availability of BAMM for sources not listed in paragraph 40 CFR 92.234 (f)(2), (f)(3), and (f)(4) by including the statement in 40 CFR 98.234(f)(5)(iv) that such emission sources are those for which data cannot reasonably be obtained.

2. Best Available Monitoring Methods Beyond 2011 for Sources Listed in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv)

• EPA revised the provisions for the use of BAMM beyond 2011 by stating that EPA will approve BAMM for use for a maximum of one year. For subsequent years, owners and operators must again request to use BAMM.

• EPA clarified provisions for the use of BAMM beyond 2011 by replacing the term ''facilities'' with ''owners and operators''.

• EPA clarified that the BAMM request must include a description of the associated unique or unusual circumstances (rather than extreme) for each emissions source for which the request has been submitted.

• EPA revised the approval criteria for the use of BAMM beyond December 31, 2011 to clarify that BAMM requests must clearly demonstrate why BAMM is needed, and must also include justifications for why the owner or operator cannot conform to requirements in subpart W.

3. Handling Best Available Monitoring Method Late Submissions Requests

• EPA revised the language in 40 CFR 98.234(f)(1) to clarify that owners and operators who submit a BAMM request after the deadlines finalized in this action must demonstrate unique or unusual circumstances unforeseen at the time of the associated BAMM deadline specified in the rule.

C. Summary of Comments and Responses

This section contains a brief summary of major comments and responses. EPA received seven sets of comments in response to the proposed revisions to the BAMM provisions. EPA's responses to additional comments can be found in the comment response document, ''Mandatory Reporting of Greenhouse Gases—Petroleum and Natural Gas Systems, Revisions to Best Available Monitoring Method Provisions: EPA's Response to Public Comment''.

1. Emission Sources Covered by BAMM

Comment: EPA received mixed comments on the expansion of the automatic BAMM coverage beyond the sources listed in 40 CFR 98.234(f)(2) and (f)(3), to sources listed in 40 CFR 98.234(f)(4) (Leak Detection and Measurement), as well as other sources under 40 CFR 98.234(f)(5)(iv). Most commenters supported the expansion, stating that the extension of automatic use of BAMM to sources for which leak detection and measurement are required as well as other sources subject to subpart W for 2011 would provide reporting entities time to fully implement the requirements of subpart W. A few commenters argued against expanding the use of automatic BAMM to all subpart W emissions sources in 2011 by stating that the extension was not appropriate for leak detection, because accurate information on leaking equipment lies at the core of subpart W and allowing BAMM for these measurements would undermine the utility of these data and obscure opportunities for facilities to both reduce emissions and save money. Further, commenters noted that the extension was not warranted because EPA did not provide a sufficient technical basis for such an extension.

Response: In this action, EPA is extending the automatic use of BAMM to the emission sources covered in 40 CFR 98.234(f)(2) through (4) and those covered in 98.234(f)(5)(iv) based on EPA's determination that this extension would assist reporters in the necessary preparations to come into full compliance with the rule. In a previous action (76 FR 22825, April 25, 2011), EPA amended the dates by which requests to use BAMM were to be submitted to the Agency. Based on the dates in that action, BAMM requests were to be submitted to the agency by July 31, 2011 for use of BAMM in calendar year 2011. To date, EPA has received over 200 submissions from owners and operators of facilities either notifying EPA of the intent to submit a BAMM request or providing EPA with the full BAMM request. Most of these 200 submissions contain information for more than one facility subject to the rule. In some cases, for example, a single submission of a notice of intent received by EPA covered over 75 facilities. All together, the submissions reflected either notifications of intent (NOIs) or requests for BAMM from over 1,900 facilities. This is over half of the 2,800 facilities that EPA originally expected to report under subpart W. The sheer number of requests received indicates that there is a significant need for BAMM for the 2011 reporting year.

Regarding commenters concern that there was no technical basis to allow use of BAMM for sources beyond 40 CFR 98(f)(2), (f)(3) and (f)(4), a memo to the docket entitled ''Supplemental Data Submitted on BAMM'' demonstrates by specific examples justification for the extension to additional emissions sources, at least for the 2011 reporting year.

Commenters also were concerned that by allowing the use of BAMM, EPA would ''undermine the utility of these data and obscure opportunities for facilities to both reduce emissions and save money.'' EPA recognizes that use of BAMM could result in some inconsistencies in how owners and operators calculate emissions for a specific facility. However, regulations for *facility* level monitoring for the petroleum and natural gas industry are a new and significant undertaking and will greatly improve the emissions estimates for this industry. For instance, although they are required to follow the calculation equations in the rule, owners and operators will have some flexibility in how they estimate the inputs to those equations. Nevertheless, although the input parameters are calculated using BAMM, the data obtained would be a significant improvement over current emissions estimation methods.

For example, current source-level emissions estimates for the petroleum and natural gas industry are primarily available through the Inventory of U.S. GHG Emissions. Although the national level GHG Inventory and the GHG Reporting Program are very different and the programs have different goals and different levels of coverage of industry emissions, an understanding of the quality and availability of source-specific data in the national GHG inventory is germane to the comments raised. The national GHG Inventory provides national level estimates and does not provide the level of granularity that will be available from the facility level GHG reports which will be available under the GHG Reporting Program. So, although facilities will be able to use BAMM, reporting facility-level data provides significant additional information on emissions in the industry above and beyond what is currently available.

Second, the methods used to estimate facility-level emissions are an improvement over the national-level methods. In the national GHG

Inventory, EPA relies on predominantly national level statistics and default emissions factors from a 1996 study titled ''*Methane Emissions from the Natural Gas Industry*'' [1]. For example, in the national GHG Inventory, emissions from tanks are estimated using an emission factor per barrel of crude oil/condensate produced multiplied by the national volumes of crude oil/condensate produced. This emission factor was developed using outputs from 101 simulation runs of the API Tank model for certain types of crude/condensate input and separator pressure. However, this is not representative of the variation in crude oil/condensate qualities and separator pressure at oil and gas operations across the nation. Hence, although facilities may be able to use BAMM to estimate emissions from tanks, the emissions estimates reported using BAMM will nonetheless be an improvement over existing methods by providing additional information on the varying characteristics of oil and gas operations across the country, which is not available through the national inventory.

In summary, EPA has concluded that granting automatic use of BAMM without approval for 2011 will still provide EPA with improved data from the industry, while providing owners and operators sufficient time to perform the necessary steps to ensure full compliance with subpart W.

2. Use of BAMM Beyond 2011

Comment: Several commenters argued against EPA's proposal to extend the deadline for requesting use of BAMM beyond December 31, 2011 stating that the proposed provisions would greatly undermine the data reported under subpart W. Further, commenters stated that the reporting community did not push for this revision and it is therefore unwarranted.

Response: In this action, EPA is finalizing, as proposed, the two-phase approach that results in an initial six-month extension of the date for requesting BAMM for 2012. The two-phase approach is similar to the process used under 40 CFR part 98 for subparts P, X, and Y. As indicated at proposal, this automatic extension would be necessary because under the rule, facilities are only granted automatic BAMM through December 31, 2011. For facilities that are requesting BAMM for beyond 2011, BAMM must be extended automatically to provide EPA the time to review thoroughly the BAMM requests submitted for a period beyond 2011, while ensuring that the requesting facilities are not out of compliance with the rule during that review process.

First and foremost, EPA notes that the 2010 final rule for subpart W allows requests for BAMM beyond 2011. 40 CFR 98.234(f)(8) provides for BAMM post-2011 if those requests were submitted by September 30, 2011. The extension of the deadline for BAMM beyond 2011 was necessary for the same reasons that extension of automatic BAMM was necessary for 2011; the substantial number of owners and operators requesting BAMM would require significant resources by reporters that EPA has concluded would be better applied to concentration on coming into compliance with the rule.

In addition, it is not accurate to say that industry did not request use of BAMM past 2011. For example, in its Petition for Reconsideration, the Interstate Natural Gas Association of America (INGAA) stated, ''[t]here is no reasonable basis for * * * denying BAMM to a facility already subject to reporting, that confronts an unpredictable facility or operational issue (*e.g.,* low utilization) that precludes measurement, just because these events occur after September 30, 2011. These and other situations should be eligible for BAMM, and INGAA seeks reconsideration so EPA can offer BAMM to these otherwise stranded facilities and unaddressed future events.'' Similarly, in its petition for reconsideration, the American Petroleum Institute (API) indicated that EPA should remove the September 30, 2011 deadline for requesting BAMM post-2011, relaying that BAMM should be considered for such time as there is a reasonable need for use of BAMM. Chesapeake Energy Corporation and the American Exploration and Production Council echoed similar needs to have BAMM beyond 2011 (and 2012). They indicated in their comments on this proposed rule that ''EPA should anticipate that there may be some situations that are beyond companies' control, which would require additional BAMM beyond June 2012. For example, if there is insufficient supply of necessary monitoring equipment or if there are unexpected equipment manufacturing delays that prevent a company from installing that necessary monitoring equipment until late 2012, EPA should allow that company to use BAMM until the equipment can be delivered and installed.''

EPA has concluded that an initial six month extension of the September 30, 2011 deadline is necessary. Further, commenters did not provide any specific examples of how such an extension could undermine data quality. In fact, EPA has concluded that the additional six months will provide owners and operators additional time to visit their facilities and determine whether or not they actually need BAMM. EPA does not believe that all of the 1,900 plus facilities that have currently requested BAMM or filed notices of intent to apply for BAMM actually need BAMM, but rather they have submitted a request (or notice of intent) because they have not had sufficient time to fully evaluate their BAMM needs. A six-month extension of the deadline provides sufficient time for facilities to fully evaluate their needs and only submit genuine BAMM requests based on that need. Therefore, EPA has determined that this extension of the deadline for BAMM beyond 2011 is appropriate and will only approve BAMM requests that fulfill the requirements outlined in the content of request section of 40 CFR 98.234(f)(8).

Comment: Some commenters argued against the removal of the term ''extreme'' from 40 CFR 98.234(f)(8) and replacing it with ''unique or unusual,'' as was proposed, stating that this change would result in a wide expansion of the number of facilities that would request use of BAMM that were unwarranted. In contrast, several commenters argued against the inclusion of the terms ''unique or unusual'' and requested that EPA remove the terms from 40 CFR 98.234(f)(8) altogether. One commenter suggested replacing terms like ''extreme'' and ''unique'' with ''good cause'' because the complexity of the rule and the breadth of its application justify broader discretion in allowing BAMM than this text would appear to provide.

Response: EPA carefully evaluated the introductory text in 40 CFR 98.234(f)(8) and in this action has removed the term ''extreme,'' as proposed, in order to more fully clarify its intent of the types of circumstances for which BAMM could be used beyond 2011. EPA intended that use of BAMM post 2011 should only be allowed in limited and exceptional circumstances. As described in the 2010 final preamble, inasmuch as approximately fourteen months will have passed between signature of the final rule and January 1, 2012 (75 FR 74471, November 30, 2010). However the examples provided, ''safety, a requirement being technically infeasible, or counter to other local,

[1] EPA/GRI (1996) *Methane Emissions from the Natural Gas Industry.* Prepared by Harrison, M., T. Shires, J. Wessels, and R. Cowgill, eds., Radian International LLC for National Risk Management Research Laboratory, Air Pollution Prevention and Control Division, Research Triangle Park, NC. EPA–600/R–96–080a.

State or Federal regulations'' are not ''extreme'' circumstances. Rather, we would consider BAMM for circumstances that were unexpected by EPA at the time of drafting the final rule, but which might not necessarily be ''extreme'' in practice. The Miriam Webster dictionary defines ''extreme'' as exceeding the ordinary, usual, or expected. Synonyms for extreme are ''remotest'', ''ultimate'', ''outermost.'' According to the Miriam Webster dictionary, the term ''unique'' can refer to distinctively characteristic, with synonyms such as individual, particular, and personalized. Unusual refers to circumstances that are ''rare'' or ''uncommon.'' The point of post-2011 BAMM was to target circumstances that are unique or unusual and something less than extreme.

EPA disagrees with the commenters who argued that we should remove the terms ''unique or unusual''. EPA believes that the use of BAMM beyond December 31, 2011 should be limited to only unique or unusual circumstances because, as described above, by this time facilities will have had adequate time to take the necessary steps to bring their facilities into compliance with the rule, save for the few site-specific circumstances that are truly unique or unusual.

Comment: One commenter stated that EPA should only allow the use of BAMM beyond 2011 in one-year increments. The commenter was concerned that the proposed amendments relaxed the BAMM provisions and that if EPA were to amend the timelines for beyond 2011 BAMM, EPA should only permit alternative methods where facilities experience real, exigent circumstances. To this extent, they recommended that approval for BAMM be expressly time-limited.

Response: EPA agrees with the commenter that use of BAMM beyond December 31, 2011 should be for a limited period of time. As described above, EPA intends to approve the use of BAMM beyond 2011 only in cases that are unique or unusual. EPA agrees with the comments expressed by the commenter; a time limit for approving each BAMM ensures that the ''unique or unusual'' criteria continue to be met in subsequent years. Limiting approval to one year is consistent with the original purpose of BAMM, which was to provide a reasonable period of time during the period after subpart W came into effect to allow facilities to reasonably come into compliance with the rule. It is also important to be aware that EPA always had the right within the 2010 final rule to approve BAMM for only one year.

At the same time, the time limitation on BAMM approvals adds minimal burden for facilities requesting BAMM. If a facility already has received an approval for a BAMM request post-2011, then that the facility successfully demonstrated ''unique or unusual'' circumstances. If those same circumstances do not change, for example, the monitoring requirements in subpart W continue to lead to safety concerns for facility operators, the facility can reasonably expect that their future submissions would also be approved. It is also possible that EPA could learn from the BAMM requests received that a particular rule provision results in safety concerns for multiple facilities. In these circumstances, EPA may choose to provide an additional method(s) to estimate emissions from that emissions source in order to avoid the safety issues. Any additional methods would only be finalized after notice and comment. Approving BAMM for a limited time provides sufficient certainty for owners and operators, while ensuring that only those BAMM requests that reflect unique or unusual circumstances are approved.

3. Use of BAMM for Special Circumstances

Comment: Several commenters requested that EPA include a provision by which owners and operators who acquire new operations would be given automatic approval to use BAMM for a specified period of time after acquiring the new operations.

Response: EPA generally agrees that some facilities that acquire new operations may, for a limited period of time, need to use BAMM in order to fully comply with the rule. However, EPA does not agree that this would apply to all facilities that acquire new operations. Thus, there are no specific provisions in this action that would allow for owners or operators of facilities acquiring new operations to automatically be approved to use BAMM. EPA has concluded that the provisions outlined in the 2010 final rule, as amended by this action, allow facilities sufficient flexibility to be apply for the use of BAMM should the need arise.

For example, in some cases, if a facility acquires new operations that were already subject to subpart W, there would be no need to allow for use of BAMM for any period of time as a result of that acquisition. All operations would have been subject to subpart W from the beginning of the calendar year.

If a facility acquires new operations that were not previously subject to the GHG Reporting Program, there are options within the 2010 final rule that facilities may use to meet the requirements of the rule. In some cases, the facility will be able to estimate emissions per the calculation equations in the rule, and therefore no other provisions are required. If the facility cannot estimate emissions, the missing data procedures in 40 CFR 98.235 might be applicable. This approach would be reasonable because the data from the acquired operations could be considered missing, in that they had not been retained by the plant not subject to the rule in the beginning of the year. In this case, if the calculations can be undertaken in the current reporting year, or in the following year, but before the March 31st deadline, then missing data procedures might be used. Finally, if none of these existing rule options are viable, facilities can request BAMM under 40 CFR 98.234(f)(1). Such an example could be ''unique or unusual'' and therefore meet the requirements of 40 CFR 98.234(f)(1).

Comment: Two commenters requested that EPA amend the approval criteria for BAMM beyond 2011 to allow the use of BAMM until the next scheduled shutdown for circumstances where compliance would require shutdown of facilities or units that operate continuously.

Response: EPA agrees that the final rule did not intend for owners and operators to have to shut down facilities in order to install the necessary equipment and we have clarified in this action that the need to shutdown to install necessary equipment would be a valid reason for BAMM. As described in the preamble to the 2010 final rule, ''[i]f a reporter requests an extension because equipment cannot be installed without a process unit shutdown, EPA is likely to approve such a request if the documentation clearly demonstrates why it is not feasible to install the equipment without a process unit shutdown * * *'' EPA also noted that ''[t]here are many locations where monitors can be installed without a process unit shutdown, because there is often some redundancy in process or combustion equipment or in the piping that conveys fuels, raw materials and products. For example, many facilities have multiple combustion units and fuel feed lines such that when one combustion unit is not operating they can obtain the needed steam, heat, or emissions destruction by using other combustion devices. Some facilities have multiple process lines that can operate independently, so one line can

be temporarily shut down to install monitors while the facility continues to make the same product in other process lines to maintain production goals. If a monitor needs to be installed in a section of piping or ductwork, it can be possible in some cases to isolate a line without shutting down the process unit (depending on the process configuration, mode of operation, storage capacity, etc.). If the line or equipment location where a monitor needs to be installed can be temporarily isolated and the monitor can be installed without a full process unit shutdown, it is less likely EPA will approve an extension request.'' So, if owners and operators can sufficiently demonstrate that installation of required equipment would *require* a shutdown, that could also be a valid reason for BAMM post 2011.

III. Economic Impacts of the Rule

Under this provision, owners and operators are not required to use BAMM. Rather, this provision provides an alternative means of compliance in lieu of providing specified data input requirements for determining GHG emissions. Consequently, this provision is not expected to have a significant effect on the economy and an economic impact analysis is not required.

IV. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These amendments affect provisions in the rule related to BAMM. The final amendments reduce the administrative burden on industry by extending the time period by which owners and operators of facilities subject to subpart W may use BAMM without having to submit an application to EPA for approval to use BAMM in 2011. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 98 subpart W (75 FR 74458, November 30, 2010), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0651. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

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

As part of the process for finalization of the subpart W rule (75 FR 74458), EPA undertook specific steps to evaluate the effect of that final rule on small entities. Under that final rule for subpart W (75 FR 74458) EPA conducted a screening assessment comparing compliance costs to onshore petroleum and natural gas industry specific receipts data for establishments owned by small businesses. The results of that screening analysis, as detailed in the preamble to the final rule for subpart W (75 FR 74482), demonstrated that the cost-to-sales ratios were less than one percent for establishments owned by small businesses that EPA considered most likely to be covered by the reporting program. The results of that analysis can be found in the preamble to the final rule (75 FR 74485).

Based on this final action, owners and operators of certain facilities for which BAMM requests have been made according to the requirements in 40 CFR 98.234(f), are granted additional time to use BAMM during 2011 without being required to submit an application for approval to the Administrator. In addition, the final amendments in this action broaden the types of emission sources that owners and operators of affected facilities may use BAMM without being required to submit an application for approval from the Administrator. Finally, based on the amendments in this action, owners and operators who request use of BAMM for 2012 and beyond are granted additional time by which they would be required to submit their application to the Administrator for approval. We have therefore concluded that this action will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

These amendments apply to an optional provision in the final rule for subpart W, which applies to petroleum and natural gas facilities that emit greenhouse gases. Few, if any, State or local government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The fine rule amendments in this action do not result in any changes to the current requirements of 40 CFR part 98, subpart W. The amendments proposed in this rule only apply to optional provisions in 40 CFR part 98 subpart W. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rule for subpart W promulgated on November 30, 2010. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.D and VIII.F of the preamble to the 2009 final rule and Section IV.F of the preamble to the 2010 final rule for subpart W (75 FR 74485).

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

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

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

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 (SBREFA), 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 U.S. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on September 30, 2011.

List of Subjects in 40 CFR Part 98

Environmental Protection, Administrative practice and procedures, Greenhouse gases, Air pollution control, Monitoring, Reporting and recordkeeping requirements.

Dated: September 16, 2011.

Lisa P. Jackson,

Administrator.

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 98 as follows:

PART 98 [AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W [Amended]

■ 2. Section 98.234 is amended as follows:
■ a. By revising paragraph (f)(1) introductory text.
■ b. By revising paragraph (f)(2) introductory text.
■ c. By revising paragraph (f)(3) introductory text.
■ d. By revising paragraph (f)(4) introductory text.
■ e. By revising paragraph (f)(5).
■ f. By removing and reserving paragraph (f)(6).
■ g. By removing and reserving paragraph (f)(7).
■ h. By revising paragraph (f)(8).

§ 98.234 Monitoring and QA/QC Requirements

* * * * *

(f) * * *

(1) Best available monitoring methods. EPA will allow owners or operators to use best available monitoring methods for parameters in § 98.233 Calculating GHG Emissions as specified in paragraphs (f)(2), (f)(3), and (f)(4) of this section. If the reporter anticipates the potential need for best available monitoring for sources for

which they need to petition EPA and the situation is unresolved at the time of the deadline, reporters should submit written notice of this potential situation to EPA by the specified deadline for requests to be considered. EPA reserves the right to review best available monitoring method requests submitted after the deadlines specified in this section, and will consider requests which demonstrate unique or unusual circumstances unforeseen at the time of the applicable best available monitoring method deadline. The Administrator reserves the right to request further information in regard to all petition requests. The owner or operator must use the calculation methodologies and equations in § 98.233 Calculating GHG Emissions. Best available monitoring methods means any of the following methods specified in paragraph (f)(1) of this section:

* * * * *

(2) *Best available monitoring methods for well-related emissions.* During January 1, 2011 through December 31, 2011, owners and operators may use best available monitoring methods for any well-related data that cannot reasonably be measured according to the monitoring and QA/QC requirements of this subpart. These well-related sources are:

* * * * *

(3) *Best available monitoring methods for specified activity data.* During January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for activity data as listed below that cannot reasonably be obtained according to the monitoring and QA/QC requirements of this subpart. These sources are:

* * * * *

(4) *Best available monitoring methods for leak detection and measurement.* During January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for sources requiring leak detection and/or measurement that cannot reasonably be obtained according to the monitoring and QA/QC requirements of this part. These sources include:

* * * * *

(5) *Requests for the use of best available monitoring methods.*

(i) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for the sources specified in paragraph (f)(2) of this section.

(ii) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for sources specified in paragraph (f)(3) of this section.

(iii) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for sources specified in paragraph (f)(4) of this section.

(iv) No request or approval by the Administrator is necessary to use best available monitoring methods for data that cannot reasonably be obtained between January 1, 2011 and December 31, 2011 for sources not listed in paragraph (f)(2), (f)(3), and (f)(4) of this section.

(6) [Reserved]

(7) [Reserved]

(8) *Requests for extension of the use of best available monitoring methods beyond 2011 for sources listed in paragraphs (f)(2), (f)(3), (f)(4), and (f)(5)(iv) of this section.*

(i) *Timing of Request.* EPA does not anticipate a need for best available monitoring methods beyond 2011, but for all reporting years after 2011, best available monitoring methods will be considered for unique or unusual circumstances which include data collection methods that do not meet safety regulations, technical infeasibility, or counter to other local, State, or Federal regulations. For use of best available monitoring methods in 2012, an initial notice of intent to request best available monitoring methods must be submitted by December 31, 2011. Any notice of intent submitted prior to the effective date of this rule cannot be used to meet this December 31, 2011 deadline; a new notice of intent must be signed and submitted by the designated representative. In addition to the initial notification of intent, owners or operators must also submit an extension request containing the information specified in 98.234(f)(8)(ii) by March 30, 2012. Any best available monitoring methods request submitted prior to the effective date of this rule cannot be used to meet the March 30, 2012 deadline; a new best available monitoring methods request must be signed and submitted by the designated representative. Owners or operators that submit both a timely notice of intent and extension request consistent with 98.234(f)(8)(ii) can automatically use BAMM through June 30, 2012, for the specific parameters identified in their notification of intent and best available monitoring methods request regardless of whether the best available monitoring methods request is ultimately approved. Owners or operators that submit a notice of intent but do not follow up with a best available monitoring methods request by March 30, 2012 cannot use best available monitoring methods in 2012. For 2012, when an owner or operator has submitted a notice of intent and a subsequent best available monitoring method extension request, use of best available monitoring methods will be valid, upon approval by the Administrator, until the date indicated in the approval or until December 31, 2012, whichever is earlier. For reporting years after 2012 a new request to use best available monitoring methods must be submitted by September 30th of the year prior to the reporting year for which use of best available monitoring methods is sought.

(ii) *Content of request.* Requests must contain the following information:

(A) A list of specific source categories and parameters for which the owner or operator is seeking use of best available monitoring methods.

(B) For each specific source for which an owner or operator is requesting use of best available monitoring methods, a description of the unique or unusual circumstances, such as data collection methods that do not meet safety regulations, technical infeasibility, or specific laws or regulations that are counter to data collection methods that conflict with each specific source.

(C) A detailed explanation and supporting documentation of how and when the owner or operator will comply with all of the subpart W reporting requirements for which use of best available monitoring methods are sought.

(iii) *Approval criteria.* To obtain approval to use best available monitoring methods after December 31, 2011, the owner or operator must submit a request demonstrating to the Administrator's satisfaction that the owner or operator faces unique or unusual circumstances which include, by way of example and not in limitation, clearly demonstrated data collection methods that do not meet safety regulations, technical infeasibility, or counter to other local, State, or Federal regulations, along with the reasons the owner or operator cannot otherwise address the unique or unusual circumstances as required to be demonstrated in this paragraph.

[FR Doc. 2011–24362 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0927; FRL–9469–3]

RIN 2060–AR26

Mandatory Reporting of Greenhouse Gases: Changes to Provisions for Electronics Manufacturing To Provide Flexibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a regulation to amend the calculation and monitoring provisions in the Electronics Manufacturing portion of the Greenhouse Gas Reporting Rule for the ''largest'' semiconductor manufacturing facilities (*i.e.,* those that fabricate devices on wafers measuring 300 millimeters or less in diameter and that have an annual manufacturing capacity of greater than 10,500 square meters). More specifically, for reporting years 2011, 2012, and 2013, these amendments allow the largest semiconductor facilities the option to calculate emissions using default emission factors already contained in the regulations, instead of recipe-specific utilization and by-product formation rates for the plasma etching process type. In addition, this action extends two deadlines in the provisions related to the use of best available monitoring methods.

DATES: This final rule is effective on September 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0927. 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.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available in hard copy only. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; telephone number (202) 343–9263; fax (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, followed by ''Contact Us.''

Worldwide Web (WWW). In addition to being available in Docket ID No. EPA–HQ–OAR–2009–0927, following the Administrator's signature, an electronic copy of this final rule will also be available through the WWW on EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). These are final changes to existing regulations. These amended regulations affect owners or operators of certain manufacturers of electronic devices. Regulated categories and examples of affected entities include those listed in Table 1 of this preamble.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Electronics Manufacturing	334111	Microcomputer manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	Liquid Crystal Display (LCD) unit screens manufacturing facilities.
	334419	Micro-electro-mechanical systems (MEMS) manufacturing facilities.

Although Table 1 of this preamble lists the types of facilities that EPA is now aware could be potentially affected by this action, other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subparts A and I. If you have questions regarding the applicability of this action to a particular facility or supplier, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

The final rule is effective on September 30, 2011. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making this rule effective on September 30, 2011. Section 5 U.S.C. 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As explained below, EPA finds that there is good cause for this rule to become effective on September 30, 2011, even though this results in an effective date fewer than 30 days from date of publication in the **Federal Register**.

The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the revisions being made in this package provide flexibilities to sources covered by the reporting rule, a shorter effective date in such circumstances is consistent with the purposes of APA section 553(d), which provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Accordingly, we find good cause exists to make this rule effective

on September 30, 2011, consistent with the purposes of 5 U.S.C. 553(d)(3).

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by November 28, 2011. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. CAA section 307(d)(7)(B) also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Acronyms and Abbreviations

The following acronyms and abbreviations are used in this document.

APA Administrative Procedure Act.
BAMM best available monitoring methods.
CAA Clean Air Act.
CBI confidential business information.
CFR Code of Federal Regulations.
DRE Destruction or Removal Efficiency.
EPA U.S. Environmental Protection Agency.
FR **Federal Register**.
GHG greenhouse gas.
ICR Information Collection Request.
ISMI International Sematech Manufacturing Initiative.
LCD Liquid Crystal Display.
LED Light-emitting Diodes.
m^2 square meters.
mm millimeter.
MEMS Micro-electro-mechanical systems.
NAICS North American Industrial Classification System.
NTTAA National Technology Transfer and Advancement Act of 1995.
OMB Office of Management and Budget.
QA/QC Quality Assurance/Quality Control.
RFA Regulatory Flexibility Act.
RIA Regulatory Impact Analysis.
SBA Small Business Administration.
SIA Semiconductor Industry Association.
SBREFA Small Business Regulatory Enforcement and Fairness Act.
U.S. United States.
UMRA Unfunded Mandates Reform Act of 1995.
USC United States Code.
WWW World Wide Web.

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I. Background

A. Organization of This Preamble

The first section of this preamble contains the basic background information about the origin of the amendments to the rule being made today. This section also discusses EPA's use of our legal authority under the Clean Air Act to collect data under the Greenhouse Gas Reporting Program (also referred to as 40 CFR part 98 or Part 98).

The second section of this preamble describes in detail the changes to subpart I that are being promulgated, and EPA's rationale for those changes. This section also presents a summary of, and EPA's responses to, the major public comments submitted on the proposed rule amendments, and significant changes, if any, made since proposal in response to those comments.

Finally, the last (third) section of the preamble discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on This Action

EPA finalized subpart I: Electronics Manufacturing of the Greenhouse Gas Reporting Rule on December 1, 2010 (40 CFR part 98, subpart I) (75 FR 74774) (subpart I). In that rule, among other provisions, EPA finalized two different methods for facilities that manufacture semiconductors wafers measuring 300 mm or less in diameter to calculate and report their fluorinated GHG emissions, depending on the facility's manufacturing capacity: (1) A method for those facilities that have an annual manufacturing capacity greater than 10,500 m^2 of substrate (hereinafter referred to as the ''largest semiconductor manufacturing facilities''), and (2) a method for facilities that have an annual manufacturing capacity that is less than or equal to 10,500 m^2 of substrate (hereinafter referred to as ''other semiconductor manufacturing facilities''). Pursuant to 40 CFR 98.93(a)(2)(ii), the largest semiconductor manufacturing facilities must calculate and report their emissions using a combination of default emission factors and directly measured recipe-specific emission factors. For the following four process types and sub-types, the largest semiconductor manufacturing facilities must calculate emissions using only the default emission factors:

- Chamber cleaning process type which includes the following three process sub-types:
  —In-situ plasma chamber cleaning process sub-type.
  —Remote plasma chamber cleaning process sub-type.
  —In-situ thermal chamber cleaning process sub-type.
- Wafer cleaning process type.

For the plasma etching process type, the largest semiconductor manufacturing facilities are required to calculate emissions using only directly measured recipe-specific emission factors. This method is referred to as the Tier 2d method.

Pursuant to 40 CFR 98.93(a)(2)(1), other semiconductor manufacturing facilities must calculate and report their fluorinated GHG emissions using default emission factors for the following five process types and sub-types:

- Plasma etching process type.
- Chamber cleaning process type, which includes the following three process sub-types:

—In-situ plasma chamber cleaning process sub-type.

—Remote plasma chamber cleaning process sub-type.

—In-situ thermal chamber cleaning process sub-type.

- Wafer cleaning process type.

This method is referred to as the Tier 2c method.

In the December 1, 2010 rule, EPA also included provisions in section 98.94(a) for all electronics manufacturing facilities to use and/or request the use of best available monitoring methods (BAMM) for a specific period of time in lieu of following the monitoring and Quality Assurance/Quality Control (QA/QC) requirements of subpart I for certain parameters that cannot reasonably be measured.

Following the publication of subpart I in the **Federal Register**, the Semiconductor Industry Association (SIA) sought reconsideration of several provisions in the final rule (See SIA petition available in Docket ID No. EPA–HQ–OAR–2009–0927). In particular, SIA raised concerns about the provisions related to the use of BAMM and also the individual recipe measurement approach, that is, the requirement that the largest facilities develop and use recipe-specific emission factors for etch processes.[1]

In response to SIA's petition, EPA took two initial actions. First, on June 22, 2011 EPA granted reconsideration with respect to the deadlines contained in the subpart I BAMM provisions and published a final rule that extended three of the subpart I BAMM deadlines, relating to when owners and operators may use or request to use BAMM, from June 30, 2011 to September 30, 2011 (76 FR 36339). Second, also on June 22, 2011, EPA published a proposed rule to allow the largest semiconductor manufacturers to use the default utilization and by-product formation rates (default emission factors) already contained within subpart I in Tables I–3 and I–4 to estimate fluorinated GHG emissions for the plasma etching process type through December 31, 2012, instead of using directly measured recipe-specific emission factors for each individual recipe or set of similar recipes[2] (76 FR 36472). This proposed action also sought comment on whether certain BAMM deadlines should be extended, whether the largest semiconductor manufacturing facilities should be allowed to use default emission factors in lieu of recipe-specific emission factors through December 31, 2013, and on the verification requirement for facility specific engineering models used to apportion gas consumption (40 CFR 98.94(c)(2)).

C. Legal Authority

EPA is promulgating these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final Part 98 (74 FR 56260, October 30, 2009) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed part 98 (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA's legal authority, see the preambles to the 2009 proposed and final Part 98 rules and EPA's Response to Comments, Volume 9.[3]

II. Final Changes to Subpart I of 40 CFR part 98 and Responses to Public Comments

A. Summary of Final Changes to Subpart I

In this action, EPA is finalizing provisions to allow the largest semiconductor manufacturing facilities the option to calculate emissions using default emission factors already contained within subpart I, instead of recipe-specific emission factors, for the plasma etching process type for reporting years 2011, 2012, and 2013. In other words, through December 31, 2013, the largest semiconductor manufacturing facilities may use the Tier 2c[4] method to estimate fluorinated GHG emissions from etching and cleaning processes. This gives more time for EPA to work on various approaches SIA has proposed as alternatives to the recipe-specific approach. SIA is currently in the process of providing information to EPA for consideration and evaluation.

As EPA explained in the preamble to the June 22, 2011 proposed rule, SIA has identified three alternative methodologies that they are proposing for the Agency's consideration and for which they are currently collecting information to support their development: (1) Etch Process Subcategories and Default Emissions Factors; (2) Direct Estimation of Emissions Based on Use Allocation and Application of Abatement Unit Destruction and Efficiency (DRE); and (3) Stack Testing (75 FR 36472). For more information on the three options, please refer to SIA's letter (available in docket EPA–HQ–OAR–2009–0927).

Since publication of the proposed rule, SIA has continued to pursue the three options and provide EPA with supporting technical information and/or future work plans. Given the technical complexity of the three alternatives and based on the current status of their development, EPA has determined that more time is needed for SIA to continue to work on the alternative options, for EPA to fully assess them, and for the Agency to undertake rulemaking to revise subpart I as appropriate. Over the next approximately two and a half years, EPA plans to comprehensively evaluate the technical information that SIA provides on the methodologies, determine whether one or more of them should be included in subpart I as alternatives to the recipe-specific measurement approach for the largest semiconductor manufacturing facilities, and revise subpart I as appropriate, through a notice and comment

[1] For more information, see SIA's petition in the docket, EPA–HQ–OAR–2009–0927.

[2] Pursuant to subpart I, to be included in a set of similar recipes, a recipe must be similar to the recipe in the set for which recipe-specific utilization and by-product formation rates have been measured.

[3] 74 FR 16448 (April 10, 2009) and 74 FR 56260 (October 30, 2009). Response to Comments Documents can be found at *http://www.epa.gov/climatechange/emissions/responses.html.*

[4] In the December 1, 2010 final rule (75 FR 74774), EPA named the following method the ''Tier 2c Method''—A method based on calculating and reporting fluorinated GHG emissions using default emission factors for the following five process types and sub-types: the plasma etching process type; the chamber cleaning process type, which includes the following three process sub-types: the in-situ plasma chamber cleaning process sub-type, the remote plasma chamber cleaning process sub-type, the in-situ thermal chamber cleaning process sub-type; and the wafer cleaning process type.

rulemaking. It is EPA's intention to finalize a revision to subpart I that can be implemented by the largest semiconductor manufacturing facilities by January 1, 2014.

This action also extends two deadlines in the subpart I provisions related to the use of BAMM. First, EPA is extending the date by which an owner or operator subject to subpart I may, without submitting a request, use BAMM to estimate 2011 emissions from September 30, 2011 to December 31, 2011. EPA is extending the deadline to provide additional flexibility for any owner or operator that was unable to meet the February 28, 2011 deadline for submitting a request for the use of BAMM in 2011 for parameters other than recipe-specific emission factors. Second, EPA is extending the date by which an owner or operator may submit a request to extend the use of BAMM beyond December 31, 2011 from September 30, 2011 to October 17, 2011. EPA is extending the deadline to provide owners and operators additional time to prepare and submit the request. EPA has concluded that this flexibility is appropriate given that the effective date of this final rule, September 30, 2011, is the same as the date by which extension requests are required to be submitted to the Administrator. See Section II.B.2 below of this preamble for additional discussion on both of these topics.

Lastly, in this action, EPA is clarifying several aspects of the subpart I BAMM provisions. More specifically, EPA is clarifying that the subpart I BAMM provisions for estimating emissions beyond December 31, 2011 do not specify an end date to the period for which EPA may approve the use of BAMM. In addition, EPA is clarifying the distinction between the elements of the BAMM application and the approval criteria by which EPA will determine if a facility is approved to use BAMM to estimate emissions beyond December 31, 2011.

Under today's final rule, owners and operators applying to extend the use of BAMM beyond December 31, 2011 must submit a request to EPA no later than October 17, 2011. The BAMM extension provisions do not impose an end date: for example, they do not say that extensions are limited to 2012. EPA does not intend to approve the indefinite use of BAMM; all BAMM applications should specify the date on which the facility plans to cease the use of BAMM. However, EPA does understand that there are specific aspects of the final subpart I provisions for which compliance may not be reasonably feasible for certain facilities during the interim period addressed in this rulemaking and for which, in some cases, EPA is evaluating and considering other approaches. In particular, the establishment of an interim period through 2013 during which the largest facilities have the option of using the Tier 2c method [5] while the Agency considers longer-term alternatives may affect facilities' planning for compliance with other aspects of subpart I. In part, this is because the potential incorporation of alternative methods into subpart I could render certain aspects of the rule moot for some facilities, depending on the alternative adopted. For example, if EPA were to propose to revise subpart I to include a stack testing method, the Agency would also consider whether certain aspects of subpart I as currently written would be unnecessary to determine the emissions of facilities using that method. In addition, any revisions to subpart I to incorporate alternative methods likely would not be effective until 2014, meaning that facilities that are interested in moving toward alternatives and that are requesting BAMM for 2012 may need to consider whether their applications should include 2013 as well.

EPA has concluded that the existing subpart I BAMM provisions provide flexibility to address facilities' needs during this interim period as the Agency continues to consider longer-term alternatives. See Section II.A.2 and II.A.3 for additional discussion on this topic.

EPA is also clarifying the difference between the application requirements and the approval criteria for BAMM extensions in subpart I. The application requirements are contained in 40 CFR 98.94(a)(4)(ii), and the approval criteria appear in 40 CFR 98.94(a)(4)(iii). With regard to approval, the rule states, ''To obtain approval, the owner or operator must demonstrate that by December 31, 2011 (or in the case of facilities that are required to calculate and report emissions in accordance with § 98.93(a)(2)(ii)(A), December 31, 2012), it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment according to the requirements of this subpart.'' Given today's final rule to allow the largest semiconductor manufacturing facilities to use default emission factors to estimate emissions for the plasma etching process type during an interim period, EPA doesn't anticipate receiving any requests for the use of BAMM for recipe-specific emission factors. If there are facilities that are unable to meet the requirements for other monitoring or QA/QC aspects of subpart I in 2012 or beyond, then they should apply for BAMM for the period they believe to be necessary and EPA will evaluate whether to allow the use of BAMM and for how long. In some instances, EPA anticipates that facilities will come into compliance with the requirements quickly; for others, EPA understands that facilities may wish to use BAMM while EPA considers alternatives. It is important to note that EPA does not anticipate approving the use of BAMM for current subpart I provisions beyond the time that EPA promulgates a final rule with alternative methodologies. As stated in previous paragraphs of this section, we anticipate issuing a revised rule by January 1, 2014.

B. Summary of Comments and Responses

EPA received comments from five entities. In general, all commenters supported EPA's proposal to allow the largest semiconductor manufacturing facilities to use default emission factors to estimate fluorinated GHG emissions for the plasma etching process type for 2011 and 2012, and requested that EPA extend the use of defaults through December 31, 2013. The comments are addressed in more detail below.

1. Summary of Comments and Responses on Allowing the Largest Semiconductor Manufacturing Facilities To Use Default Emission Factors for the Plasma Etching Process Type

All five commenters strongly supported EPA's proposal to allow the largest semiconductor manufacturing facilities to use the Tier 2c Method [6] to calculate emissions for the years 2011 and 2012 in lieu of using the Tier 2d Method.[7] These commenters viewed the finalization of this flexibility provision as an important first step in addressing their technical feasibility, compliance cost, and data confidentiality concerns about subpart I. (One commenter provided accompanying detailed documentation to support each of the aforementioned concerns.) These same commenters also noted that allowing the use of the Tier 2c Method [8] in 2011 and 2012 provides more time for members of the industry to conduct ongoing work in

[5] See footnote 4.

[6] See footnote 4.

[7] In the December 1, 2010 final rule (75 FR 74774), EPA named the following method the ''Tier 2d Method''—A method based on calculating and reporting fluorinated GHG emissions using default emission factors for the three chamber cleaning process sub-types (defined in footnote 4) and the wafer cleaning process type, and recipe-specific emission factors for the plasma etching process type.

[8] See footnote 4.

support of various alternative approaches to estimating and reporting fluorinated GHG emissions for EPA to evaluate and consider. Some commenters referenced the three alternatives proposed by SIA as discussed in a letter dated May 26, 2011 (available in docket EPA–HQ–OAR–2009–0927). One commenter stated, ''These alternatives [the SIA proposed alternatives], if adopted by EPA, will provide the largest semiconductor facilities a menu of GHG reporting options that will avoid the serious issues raised by the current subpart I, while providing comparable or better accuracy than the current rule.'' Another commenter opined that the ongoing alternatives work could be done while still allowing facilities to report fluorinated GHG emissions in a manner that avoids feasibility and cost issues that the commenter believed were inherent to subpart I.

A few commenters asserted that because of feasibility, cost, and confidentiality issues, many facilities would need to file BAMM requests for developing or obtaining recipe-specific emission factors for the plasma etching process type. Several commenters supported the flexibility provisions because they provide uniform relief from BAMM petition requests, avoiding spending both facility and EPA resources to prepare and review BAMM requests on an individualized case basis.

Similarly, all commenters strongly supported extending the use of the Tier 2c Method [9] beyond December 31, 2012 through 2013. One commenter stated that it shared EPA's goal of finalizing any alternative approaches for estimating and reporting fluorinated GHG emissions for the 2013 reporting year. However, commenters argued that, given the technical complexities associated with development of alternatives to the Tier 2d Method,[10] additional time will be necessary for industry to test and collect data about the alternatives and for EPA to evaluate those alternatives. One commenter asserted that this extension would allow the facility to focus its resources on developing alternative emission estimation and reporting methods as opposed to diverting resources to an approach that it does not believe is workable.

Another commenter stated that it was critical to extend the time period in which default emission factors could be used to estimate emissions from all process types/sub-types. The commenter further stated that the current schedule to finalize a revised subpart I by the end of 2012 is aggressive and accelerated, and may result in a repeat of the shortcomings that led to the final subpart I published in December 2010 (75 FR 74774). The same commenter also expressed the opinion that it is important that the process of revising subpart I does not drag on interminably, but it is equally important that EPA has sufficient information to balance requirements, accuracy and precision of emission estimates, and costs. The commenter argued that allowing the use of the Tier 2c Method [11] through 2013 will allow EPA to find that balance.

In response to these comments received, EPA is finalizing a provision to allow the largest semiconductor manufacturing facilities the option to use, for an interim period, the default utilization and by-product formation rates already contained within subpart I, in Tables I–3 and I–4, to estimate fluorinated GHG emissions for the plasma etching process type instead of using directly measured recipe-specific emission factors. In addition, EPA agrees with commenters that the largest semiconductor manufacturing facilities should be allowed to use the default emission factors to estimate emissions from etch processes through December 31, 2013 (*i.e.,* use the Tier 2c Method [12] through 2013), and in this final rule is allowing the largest semiconductor manufacturing facilities to use default emission factors for reporting years 2011, 2012, and 2013. EPA has concluded that the additional year will provide more time for industry to continue to collect and analyze information for the development of SIA's three proposed alternatives, for EPA to evaluate and determine which alternatives may be included in a subsequent action, and for EPA to undertake a rulemaking, as appropriate. As EPA stated above, over the next approximately two and a half years, EPA plans to comprehensively evaluate the technical information that SIA provides on the methodologies, determine whether one or more of them should be included in subpart I as alternatives to the recipe-specific measurement approach for the largest semiconductor manufacturing facilities, and revise subpart I as appropriate. During the time in which this flexibility is being provided to industry, EPA expects SIA to continue to collect detailed information on the alternative methodologies that EPA plans to use to support its evaluation.

EPA believes this approach effectively balances the industry's request for flexibility with sufficient time for EPA to fully evaluate the information that SIA provides on the alternative methodologies to analyze the accuracy and precision of emission estimates, as well as burden. EPA believes that the time now allotted to working on the alternative options for estimating and reporting fluorinated GHG process emissions from semiconductor manufacturing is appropriate, and intends to finalize a revision to subpart I that can be implemented by the largest semiconductor manufacturing facilities by January 1, 2014.

2. Summary of Comments and Responses on Extending the Use of BAMM

EPA requested comment on whether to extend, until December 31, 2011, the period during which an owner or operator subject to subpart I may use BAMM to estimate 2011 emissions without submitting a request. Under the existing subpart I provisions, finalized on June 22, 2011 (76 FR 36339), to estimate emissions that occur from January 1, 2011 to September 30, 2011, owners and operators may use BAMM without submitting a request for approval to the EPA Administrator (40 CFR 98.94(a)(1)). EPA requested comment on whether to extend the date by which owners and operators may use BAMM without submitting a request for approval by the Administrator to December 31, 2011.

In addition, EPA also requested comment on whether to extend two other BAMM deadlines: the deadline by which an owner or operator may request the use of BAMM for recipe-specific emission factors in 2011 and the deadline for requesting use of BAMM for estimating emissions beyond December 31, 2011. Under the subpart I provisions finalized on June 22, 2011 (76 FR 36339), both deadlines are September 30, 2011 (40 CFR 98.94(a)(3)(i) and 40 CFR(a)(4)(i)).

EPA did not receive any comments in response to its requests. However, after evaluating comments received and further consideration of the time period between the effective date of this final rule and the date by which requests to extend the use of BAMM beyond December 31, 2011 must be submitted, EPA is extending two of the subpart I BAMM deadlines. First, EPA is extending until December 31, 2011 the time period during which an owner or operator may, without submitting a request, use BAMM to estimate

[9] See footnote 4.

[10] See footnote 7.

[11] See footnote 4.

[12] See footnote 4.

emissions in 2011. EPA is extending the deadline to provide flexibility for any owner or operator that was unable to meet the February 28, 2011 deadline for submitting a request to use BAMM in 2011 for parameters other than recipe-specific emission factors. Given the short time between the publication of the final subpart I in December 2010 and February 28, 2011, there may have been some owners or operators that were unable to submit a request by the deadline. Second, EPA is extending the deadline by which an owner or operator may submit a request to use BAMM to estimate emissions beyond December 31, 2011 from September 30, 2011 to October 17, 2011. EPA has concluded that this flexibility of approximately two weeks is appropriate given that the effective date of this final rule, September 30, 2011, is the same date as the deadline for submitting a request to the Administrator to extend the use of BAMM beyond December 31, 2011. EPA anticipates that some owners and operators will submit requests for the use of BAMM beyond December 31, 2011, and that they may need additional time to prepare and submit the request, particularly in light of the clarifications that EPA provided in this notice about the subpart I BAMM provisions. EPA is not extending the deadline further than October 17, 2011 because sufficient time is needed for EPA to review and respond to the owner or operator before the beginning of the next reporting period on January 1, 2012.

EPA is not making any changes to the deadline for submitting a request to use BAMM for recipe-specific emission factors in 2011. Given today's final rule that allows the largest semiconductor manufacturing facilities to use the Tier 2c method [13] for three years, EPA does not anticipate receiving any requests for the use of BAMM for recipe-specific emission factors in 2011. If an owner or operator is unable to comply with the Tier 2d method,[14] then EPA anticipates that they will opt to use the Tier 2c method [15] as allowed by this final rule. Further, because EPA is also finalizing provisions today that allow the use of BAMM in 2011, without submitting a request, there should be no reason for an owner or operator to submit a BAMM request for recipe-specific factors in 2011.

This paragraph summarizes the final subpart I BAMM provisions. From January 1, 2011 through December 31, 2011, owners or operators subject to subpart I may use BAMM for any parameter that cannot reasonably be measured according to the monitoring and QA/QC requirements of subpart I without submitting, and obtaining approval from, the Administrator. Starting January 1, 2012, owners and operators must discontinue the use of BAMM and begin following all applicable monitoring and QA/QC requirements of subpart I unless they have submitted a request to extend the use of BAMM and EPA has approved that request. Owners and operators wishing to extend the use of BAMM to estimate emissions beyond December 31, 2011, must submit a request to the Administrator no later than October 17, 2011.

3. Summary of Comments and Responses on Apportioning Model Verification

In the proposed rule, EPA included a request for comment on the verification requirement for facility-specific engineering models (§ 98.94(c)(2)). In particular, EPA requested specific information about whether the final rule requirement to meet the five percent verification was overly burdensome and if so, facility-specific examples to illustrate why. EPA also requested comment on whether existing equipment or instrumentation can be used to measure actual gas consumption, and the costs of using that equipment or instrumentation. In addition, we requested comment on the specific actions a facility would have to take to comply with the requirement, and the costs associated with those actions. Finally, we requested comment on other approaches that could be used to verify modeled gas consumption to a similar level of accuracy.

In response to these requests, EPA received many comments that the apportioning model verification requirement raises feasibility and cost issues for facilities. One commenter noted that they had previously raised feasibility and cost issues with continuous gas flow measurement, which is believed to be required for the verification requirement, when subpart I was initially proposed in April of 2009. While the commenter recognized that the April 2009 gas measurement requirements (74 FR 16448) differ from those for the apportioning model verification, it asserted that many of the same feasibility and cost issues apply. In addition, the commenter referred to the concern it expressed with the difficulty in apportioning gas usage in comments on the April 2010 proposed in subpart I (75 FR 74774).

Several commenters stated that facilities will need to install hardware and software to meet the verification requirements, and even with upgrades, it still may not be feasible to meet the verification requirement of less than 5 percent difference between the actual and modeled gas consumption. Another commenter elaborated further and stated that there are limitations in using an apportioning model that is based on nominal recipes because automated process controls used for many newer tools depend on potentially varying operating process parameters, and can result in differences between actual gas flow and nominal gas flow. Another commenter stated that gases have centralized distribution systems that supply multiple tools, and the systems do not typically have the ability to measure the amount of gas supplied to each individual tool. This commenter also asserted that while mass flow controllers (MFCs) are designed to control gas flow rate at precise levels, the MFCs do not log and integrate flow data over time to calculate consumption. Another commenter stated that of its 212 fluorinated GHG-using tool sets, 71 do not have adequate register space to collect the data required for gas allocation, and 15 do not have the ability to communicate with data collection systems. One commenter also stressed that collecting apportioning data for model verification would be technically infeasible for older tool sets.

One commenter expressed the opinion that the verification requirement was overly burdensome. Another commenter asserted that EPA incorrectly assumed in its Economic Impact Assessment that facilities already had the necessary hardware and infrastructure in place for model verification. The commenter stated that the capability is not currently in place and that based on an industry survey, industry will face costs of approximately $9 million in the first year and $29 million in all subsequent years to comply with the apportioning model verification requirement. The commenter stated that this is much higher than EPA's estimated total compliance costs of $2.9 million for the first year and $5.4 million for each subsequent year. One commenter estimated that the costs for one of its facilities to upgrade to meet the apportioning requirement, including the verification piece, would be $0.6 million, and $3.5 million in total company costs (not including software development and data collection and quantification labor costs). Another commenter stated that retrofitting a facility to meet apportioning

[13] See footnote 4.

[14] See footnote 7.

[15] See footnote 4.

requirements, in addition to the verification piece, is estimated to cost over $4 million.

For the above stated technical feasibility and cost reasons, and because gas apportionment as required in the current subpart I (*i.e.,* apportioning to defined process types/sub-types and recipes), may not be required if alternative emission calculation estimation methods (*e.g.*, stack testing) are adopted in a future version of subpart I, several commenters requested that EPA provide temporary relief from the apportioning model verification requirement. (Several commenters also referenced supporting technical information and their BAMM petitions as evidence to support their claims against the apportioning model verification requirements. Two commenters provided excerpts of BAMM requests as part of their comments.) More specifically, these commenters proposed that EPA modify subpart I so as to not require facilities to meet the verification requirement in § 98.94(c)(2) for the time period during which the largest semiconductor facilities are allowed to use the Tier 2c method.[16] (Two commenters expressed the opinion that they should still be required to meet the repeatability requirements in § 98.94(c)(1) for apportioning models; another commenter stated that the verification should be delayed until further study can establish a more realistic target.) During this time, commenters noted alternative methods for verifying gas apportioning models will also be developed. Two commenters stated that if the relief for the apportioning model verification requirement was not granted, but the extension for using the Tier 2c Method [17] through 2013 was finalized, there would not be any mechanism to defer compliance with the apportioning model verification requirement while alternative emission estimation and reporting methods and apportioning methods are being worked through. These commenters stated their belief that BAMM would not be available for 2013.

One commenter described an alternative method to accomplish verification for apportioning gas consumption. The commenter explained that an allocation process to determine the percent of each gas type used in each process type/sub-type may be used. This percentage would then be applied to the total amount of each gas consumed to determine the amount of gas consumed for each process type/sub-type. The allocation process would be detailed in a facility site GHG monitoring plan and would be available for EPA review and inspection. The commenter further asserted that this process will be most relevant to etch process sub-types (which represent 15 percent to 35 percent of gas consumption at a facility). The commenter expressed the opinion that the allocation process provides adequate support for validating the gas allocation methodology. The commenter stated that they are working with other members of industry to develop alternatives to the apportioning model verification requirement, such as raising the current 5 percent verification level or specifying facility specific metrics on which an apportioning model must be based in a final regulation.

EPA appreciates the information provided by commenters on technical and cost issues associated with the apportioning model verification requirement. EPA also recognizes that if the Agency were to revise subpart I to include stack testing as an option for the largest semiconductor manufacturing facilities to estimate their fluorinated GHG emissions, an apportioning model as currently required in subpart I to apportion gas to different process types/sub-types and recipes, may not be required to estimate and report GHG emissions for facilities choosing the stack testing option. However, EPA did not propose to add any new methods to subpart I as part of the current rulemaking, and thus there was no need for the Agency to consider how such new methods might affect other aspects of the rule. Further, the Agency did not propose alternative methods for apportioning model verification, as it had not had an opportunity to evaluate alternatives. However, the BAMM process should be adequate for resolving facility's concerns about compliance with the apportioning model verification requirement during the interim period addressed by this rule. Therefore, EPA is not taking action today to amend the apportioning model verification requirement; however, EPA may consider doing so in future.

EPA believes that apportioning is a particularly important component in estimating emissions of fluorinated GHGs from electronics manufacturing. Emission estimates, as required to be calculated in subpart I, are based on consumption of fluorinated GHGs for specific process types/sub-types or recipes and assigned emission factors to each process type/sub-type or recipe. Hence, there are two main sources of error in emissions estimates: (1) Errors associated with emission factors, and (2) errors associated with the consumption of gas by process type/sub-type or recipe. An accurate and precise estimate of emissions does not only rely on using robust emission factors but also on accurate estimates of gas consumption.

EPA understands that there are multiple ways to monitor and model gas consumption. For this reason, in finalizing subpart I in December 2010, EPA provided flexibility for facilities to use different metrics for the engineering model to develop apportioning factors, and only required that the model be based on a quantifiable metric. Because of this flexibility, and to ensure consistency between reporting facilities, EPA required apportioning model verification. Nevertheless, EPA is sensitive to the issues raised by commenters about apportioning model verification and understands these issues may impact a facility's ability to comply. Therefore, if a facility is unable to meet the existing apportioning verification requirements in 40 CFR 98.94(c)(2), the owner or operator may use and/or apply for BAMM as discussed in the following paragraphs.

Under the existing subpart I BAMM provisions, a facility may use and/or apply to use BAMM to verify facility-specific engineering models as required under 40 CFR 98.94(c)(2). As finalized in today's rule, an owner or operatory may, without submitting and receiving approval from the Administrator , use BAMM in 2011 for verifying facility-specific engineering models. Owners and operators wishing to extend the use of BAMM beyond December 31, 2011 for apportioning model verification must submit a request for approval to the Administrator by October 17, 2011. As explained in Section II.A of this preamble, the BAMM extension provisions do not impose an end date: for example, they do not state that extensions are limited to 2012. A facility wishing to apply for BAMM for both 2012 and 2013 should include both years in its request. EPA does not anticipate approving the use of BAMM beyond the time that EPA promulgates a final rule with alternative methodologies (*i.e.,* January 1, 2014).

EPA only received a small number of requests, as compared the number of facilities expected to report under subpart I, to use BAMM to comply with the apportioning model verification requirements in 40 CFR 98.94(c)(2) during 2011. For this reason EPA has concluded that while some facilities are unable to meet the requirements for apportioning model verification, the problem is limited. Therefore, EPA believes that the BAMM process, which considers individual facilities'

[16] See footnote 4.

[17] See footnote 4.

circumstances, is an appropriate mechanism for addressing concerns with this aspect of the rule through 2013.

EPA appreciates the alternative apportioning method to accomplish verification provided by one commenter. The Agency would like to work with the commenter to better understand the details of the method. In addition, EPA also understands that the industry will be working to develop alternative apportioning approaches as part of the development of alternatives to the recipe-specific factor method. EPA plans to undertake a comprehensive evaluation of those alternatives. The Agency may consider whether to propose an alternative approach for apportioning model verification in the future.

4. Summary of Comments and Responses on Abatement System Uptime

Although EPA's proposal did not include either a request for comment on the final subpart I provisions for monitoring abatement system uptime or a proposal for alternative methodologies, EPA received comments from four entities on the abatement system uptime provisions. In general, commenters asserted that facilities do not currently track uptime as required by the rule. These commenters proposed an alternative methodology for monitoring and calculating uptime based on the fraction of the time the abatement system is operating during the reporting year, as opposed to based on tracking time in which gas is flowing per the final subpart I requirements.

The comments that EPA received on abatement system uptime are outside the scope of the rule. Because EPA did not propose an alternative methodology for monitoring abatement system uptime, EPA is not taking action at this time to amend the requirements in the final subpart I provisions. However, the Agency intends to review concerns about the existing requirements for monitoring abatement system uptime and evaluate the alternative methodologies suggested by commenters. EPA may consider whether to propose an alternative approach to monitoring and estimating uptime for abatement systems in the future.

If a facility wishes to calculate and report controlled fluorinated GHG and N_2O emissions from the use of abatement systems, and they are unable to meet the subpart I requirements for monitoring abatement system uptime, then they can use and/or apply for the use of BAMM. As finalized in today's rule, owners or operators may use BAMM for any parameter that cannot reasonably be measured according to the monitoring and QA/QC requirements of subpart I without submitting a request to and receiving approval from the Administrator through December 31, 2011. Owners and operators wishing to extend the use of BAMM to estimate emissions that occur beyond December 31, 2011 must submit a request to the Administrator no later than October 17, 2011 and receive approval from the Administrator. It is important to note that if a facility uses BAMM to comply with the requirements to monitor uptime, then the facility must estimate its emissions using the abatement system uptime calculation methodologies and equations in subpart I (*e.g.,* Equation I–15 of subpart I), but may use alternative means of estimating the inputs to those equations.

III. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These amendments do not make any substantive changes to the reporting requirements in the subpart for which amendments are being proposed. The amendments to the reporting requirements reduce the reporting burden by allowing reporters to use default values instead of recipe-specific values for the three reporting years (2011, 2012, and 2013). In addition, this final rule extends two of the deadlines in the subpart I provisions related to best available monitoring methods. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 98, subpart I (75 FR 74774, December 1, 2010), under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0650. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

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

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

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

As part of the process for finalization of the subpart I rule (75 FR 74774, December 1, 2010), EPA undertook specific steps to evaluate the effect of that final rule on small entities. Under that final rule for subpart I, EPA assessed the potential impacts of the final requirements on small entities using a sales test, defined as a ratio of total annualized compliance costs to firm sales. The results of that screening analysis, as detailed in the preamble to the final rule for subpart I, demonstrated that there are no significant impacts to a substantial number of small entities. The results of that analysis can be found in the preamble to the final rule (75 FR 74774).

The rule amendments will reduce the burden for the largest semiconductor manufacturing facilities by providing flexibility during the first three years of compliance. In addition, the rule provides additional flexibility to those facilities that are using and/or applying for the use of best available monitoring methods by extending two deadlines. The action does not impose any new requirements on regulated entities.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the rule amendments are not subject to the requirements of section 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Facilities subject to the rule include only manufacturers of microcomputers, semiconductors, photovoltaic devices, liquid crystal display units, and micro-electro-mechanical systems. None of the facilities known to undertake these activities is owned by a small government. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

These amendments apply directly to facilities that use and emit fluorinated GHGs in the manufacture of certain electronic devices. They do not apply to governmental entities because no government facilities undertake these activities. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials or representatives of State and local governments in developing subpart I promulgated on December 1, 2010. A summary of EPA's consultations with State and local governments is provided in Section VIII.E of the preamble to the 2009 final Part 98 (74 FR 56371).

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule amendments would not result in any additional requirements beyond what is currently required in 40 CFR part 98 subpart I. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to tribal governments and representatives during the development of subpart I promulgated on December 1, 2010. A summary of EPA's consultations with tribal officials is provided in Sections VIII.E and VIII.F of the preamble to the 2009 final Part 98 (74 FR 56260) and Section IV.F of the preamble to the 2010 final rule notice for subpart I (75 FR 74814).

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

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

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Any technical standards that are required under subpart I were already included in promulgation of the final subpart I provisions on December 1, 2011 (75 FR 74774). Therefore, EPA is not considering the use of any voluntary consensus standards in this action.

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

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

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

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 (SBREFA),

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 U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on September 30, 2011.

Mandatory Reporting of Greenhouse Gases: Changes to Provisions for Electronics Manufacturing (Subpart I) to Provide Flexibililty

List of Subjects in 40 CFR Part 98

Environmental Protection, Administrative practice and procedures, Air pollution control, Monitoring, Reporting and recordkeeping.

Dated: September 16, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

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

Subpart I—[Amended]

■ 2. Section 98.93 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 98.93 Calculating GHG emissions.

(a) * * *

(2) * * *

(ii) If your facility has an annual manufacturing capacity of greater than 10,500 m^2 of substrate, as calculated using Equation I–5 of this subpart, you must adhere to the procedures in paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(C) of this section, except that you may use the procedures specified in paragraph (a)(2)(i) of this section for the 2011, 2012, and 2013 reporting years.

* * * * *

■ 3. Section 98.94 is amended by revising paragraph (a)(1) introductory text and paragraph (a)(4)(i) to read as follows:

§ 98.94 Monitoring and QA/QC requirements.

(a) * * *

(1) *Best available monitoring methods.* From January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for any parameter that cannot reasonably be measured according to the monitoring and QA/QC requirements of this subpart. The owner or operator must use the calculation methodologies and equations in § 98.93, but may use the best available monitoring method for any parameter for which it is not reasonably feasible to acquire, install, or operate a required piece of monitoring equipment in a facility, or to procure necessary measurement services by January 1, 2011. Starting no later than January 1, 2012, the owner or operator must discontinue using best available monitoring methods and begin following all applicable monitoring and QA/QC requirements of this part, except as provided in paragraphs (a)(2), (a)(3), or (a)(4) of this section. Best available monitoring methods means any of the following methods specified in this paragraph:

* * * * *

(4) * * *

(i) *Timing of request.* The extension request must be submitted to EPA no later than October 17, 2011.

* * * * *

[FR Doc. 2011–24364 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 11–123]

Internet-Based Telecommunications Relay Service Numbering

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS). These rules specifically address Video Relay Service (VRS), which allows individuals with hearing and speech disabilities to communicate using sign language through video equipment, and IP Relay, which allows these individuals to communicate in text using a computer. The final rules set forth in this Order reflect the objectives laid out in the iTRS Toll Free Notice to promote the use of geographically appropriate local numbers, while ensuring that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community.

DATES: Effective October 27, 2011 except for §§ 64.611(e)(2), 64.611(e)(3), 64.611(g)(1)(v), 64.611 (g)(1)(vi), and 64.613(a)(3), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of the rules that require OMB approval.

ADDRESSES: Interested parties may submit PRA comments identified by OMB Control Number 3060–1089 by any of the following methods: *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to *PRA@fcc.gov.* Please include CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191 and OMB Control Number 3060–1089 in the subject line of the message.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Heather Hendrickson at (202) 418–7295, Wireline Competition Bureau, Competition Policy Division. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 11–123, adopted and released on August 4, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating

contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

Paperwork Reduction Act

The Order contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Public and agency comments are due 60 days after the date of publication of this document in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

In this Order, the Commission issues final rules to improve assignment of telephone numbers associated with iTRS. Specifically, these rules are targeted to address VRS, which allows individuals with hearing and speech disabilities to communicate using sign language through video equipment, and IP Relay, which allows these individuals to communicate in text using a computer. The final rules set forth in this Order will satisfy the objective of this proceeding: to encourage use of geographically appropriate local numbers, and ensure that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community.

With regard to whether a substantial number of small entities will be affected by the requirements set forth in this Order, the Commission notes that only four providers affected by the Order meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. Currently, fifteen providers receive compensation from the Interstate TRS Fund for providing any form of TRS: American Network, AT&T Corp.; CSDVRS; CAC; GoAmerica; Hamilton Relay, Inc.; Hands On; Healinc; Kansas Relay Service, Inc.; Michigan Bell; Nordia Inc.; Snap Telecommunications, Inc; Sorenson; Sprint; and State of Michigan. Because only four of the providers affected by this Order are deemed to be small entities under the SBA's small business size standard, the Commission concludes that the number of small entities affected is not substantial. Moreover, given that all providers affected by the Order, including the four that are deemed to be small entities under the SBA's standard, are entitled to receive prompt reimbursement for their reasonable costs of compliance, the Commission concludes that the Order will not have a significant economic impact on these small entities. Therefore, we certify that requirements set forth in the Order will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the Order, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This final certification will also be published in the **Federal Register**.

Congressional Review Act

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

Synopsis of Report and Order

1. In this Order, we adopt rules to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS). These rules specifically address Video Relay Service (VRS), which allows individuals with hearing and speech disabilities to communicate using sign language through video equipment, and IP Relay, which allows these individuals to communicate in text using a computer. The final rules set forth in this Order reflect the objectives laid out in the iTRS Toll Free Notice 75 FR 67333, November 2, 2010: to promote the use of geographically appropriate local numbers, while ensuring that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community. These objectives, and the rules to implement them, received strong support in the record. Reflecting that record in this Order, we adopt the rules as proposed.

2. In 2008, the Commission instituted a ten-digit numbering plan for iTRS in order to make access by deaf and hard-of-hearing people more functionally equivalent to access enjoyed by the hearing community, as required by section 225 of the Communications Act of 1934, as amended 73 FR 41286, July 18, 2008. The Commission sought to ensure that iTRS users can be reached via telephone, as hearing users can. As a result of that order, most deaf and hard-of-hearing iTRS users have obtained local telephone numbers. Nevertheless, some iTRS providers have continued to assign customers a toll free number in addition to a local number, even if the customer did not request a toll free number.

3. In the iTRS Toll Free Notice, the Commission proposed rules to align the use of local and toll free numbers by iTRS users more closely with the way that hearing users use local and toll free numbers. The Commission's goal was to ensure that an iTRS user's local number

is used routinely as the primary telephone number that hearing users dial to reach the deaf or hard-of-hearing user via an iTRS provider, and that deaf and hard-of-hearing users employ for point-to-point calling with other deaf and hard-of-hearing users. In this Order, we adopt those proposed rules, and in doing so we advance the Commission's statutory responsibility to ensure that deaf and hard-of-hearing users are able to communicate in a manner that is ''functionally equivalent'' to the way in which hearing users communicate.

4. *Authority.* The Commission has authority, pursuant to sections 225 and 251(e) of the Communications Act of 1934, as amended (the Act), to adopt and implement a system for assigning iTRS users local numbers linked to the NANP. Section 225 requires the Commission to ensure that functionally equivalent TRS be available nationwide to the extent possible and in the most efficient manner, and directs the Commission to adopt regulations to govern the provision and compensation of TRS. Section 251 grants the Commission authority to oversee numbering administration in the United States. Adopting rules to govern the use of toll free numbers by iTRS providers in connection with iTRS services is a continuation of the implementation of the Commission's numbering plan, and is essential to the Commission's goal of making the numbering system used by deaf and hard-of-hearing individuals functionally equivalent to the system used by hearing individuals.

5. *Ten-digit numbering plan.* The Commission released the First Internet-based TRS Order on June 24, 2008, 73 FR 41286, July 18, 2008, in which it adopted a uniform numbering system for iTRS. Prior to the Commission's numbering plan, there was no uniform numbering system for iTRS, and iTRS users were reached at an IP address, a proxy or alias number, or a toll free number. With respect to toll free numbers, when a hearing user dialed the iTRS user's toll free number, the voice call was routed by the public switched telephone network (PSTN) to the provider that had subscribed to the number and assigned it to a user. Although that toll free number was not linked to a user-specific local number, the provider would translate the toll free number dialed by the hearing user to the iTRS user's IP address in the provider's database. However, until the First Internet-based TRS Order took effect, iTRS providers did not share databases, and therefore, the iTRS user and people calling that user were forced to use the service of the iTRS provider that gave the user the toll free number.

6. In the Second Internet-based TRS Order, released on December 19, 2008, 73 FR 79683, December 30, 2008, the Commission addressed issues raised in a Further Notice of Proposed Rulemaking 73 FR 41307, July 18, 2008, that accompanied the First Internet-based TRS Order. With respect to the use of toll free numbers, the Commission found that, to further the goals of the numbering system, ''Internet-based TRS users should transition away from the exclusive use of toll free numbers,'' and required all iTRS users to obtain ''ten-digit geographically appropriate numbers, in accordance with our numbering system.'' The Commission determined, among other things, that local numbers rather than toll free numbers should be used when an iTRS user contacted Public Safety Answering Points (PSAPs). Accordingly, the Commission required that a user's toll free number be mapped to the user's local, geographically appropriate number. Moreover, the Commission found that, because hearing telephone users are responsible for the costs of obtaining and using toll free numbers, functional equivalency dictates that the TRS Fund should not compensate providers for the use of toll free numbers by iTRS users.

7. *iTRS Toll Free Issues.* In August 2009, the Consumer and Governmental Affairs Bureau and the Wireline Competition Bureau (the Bureaus) released the Toll Free Clarification Public Notice to clarify the requirement, imposed in the Second Internet-based TRS Order, that any toll free number retained or acquired by an iTRS user must be directed to the user's local number in the Service Management System (SMS)/800 database, and that a toll free number and a local number should not be directed to the same Uniform Resource Identifier (URI) in the Internet-based TRS Numbering Directory (iTRS Directory). This action was taken to ensure that the use of toll free numbers by iTRS users would be functionally equivalent to the use of toll free numbers by hearing users. Additionally, the Public Notice acknowledged that certain point-to-point calls, as well as inbound dial-around calls, would require the use of a local number.

8. On September 10, 2009, CSDVRS, a provider of VRS, filed a petition for expedited reconsideration of the Toll Free Clarification Public Notice, claiming, among other things, that the Toll Free Clarification Public Notice violated the Administrative Procedure Act, impeded VRS interoperability, and undermined functional equivalency by eliminating the use of toll free numbers for point-to-point and dial-around calls. Subsequently, the TDI Coalition, which represents deaf and hard-of-hearing iTRS users, filed a Petition for Emergency Stay and a Request to Return to the Status Quo Ante. The TDI Coalition asked the Commission to stay certain portions of the Toll Free Clarification Public Notice, and to direct iTRS providers that had removed toll free numbers from the iTRS Directory to reinstate those numbers to avoid any disruption in service.

9. In response to TDI's concerns that certain point-to-point calls would not be completed, on December 4, 2009, the Bureaus waived the portion of the Toll Free Clarification Public Notice that stated that a toll free number and a local geographic number should not be directed to the same URI in the iTRS Directory. Also, the Bureaus directed iTRS providers that had removed working, assigned toll free numbers that did not point to the iTRS user's local number in the SMS/800 database, in accordance with the Toll Free Clarification Public Notice, to reinstate those toll free numbers to the iTRS Directory. The waiver was designed to give the Commission time to consider the CSDVRS petition for reconsideration as well as iTRS toll free issues generally. The Bureaus also recognized that it would take consumers and certain small businesses time to transition to geographically appropriate local numbers. The Bureaus have issued several extensions of this waiver.

10. *iTRS Toll Free Notice.* To address the issues raised in response to the Toll Free Clarification Public Notice and to generally improve assignment of telephone numbers associated with iTRS, the Commission issued the iTRS Toll Free Notice. In the Notice, the Commission found that the routine issuance and prevalence of toll free iTRS numbers presented concerns with respect to: (1) Lack of functional equivalency and consumer confusion; (2) emergency calling; (3) lack of number portability and impairment of full competition; (4) number conservation; and (5) costs to the TRS Fund. The Commission, pursuant to its authority under sections 225 and 251 of the Act, proposed rules to address the problems that are caused by the promotion and disproportionately high use of toll free numbers in connection with iTRS services.

11. The Commission emphasized in the iTRS Toll Free Notice that it was not seeking to prevent deaf or hard-of-hearing individuals from obtaining a toll free number, but rather to ensure that toll free numbers do not serve as default personal numbers. The Commission

sought comment on ways to ensure that iTRS users who need toll free numbers for business purposes or who wish to obtain a toll free number for personal use are able to do so in the same manner as hearing users. Interested parties, including providers and consumer groups, commented on the iTRS Toll Free Notice and generally supported the Commission's proposed rules.

12. *User-Selected Toll Free Use.* In the iTRS Toll Free Notice, we proposed to prohibit iTRS providers, acting in the capacity of a user's default number provider, from routinely assigning a new toll free number to the user. We noted that consumer groups representing iTRS users supported this approach and agreed with the Commission on the need to limit or prohibit the distribution of toll free numbers by iTRS providers. The consumer groups continue to support this proposal. The TDI Coalition states that it supports the transition from toll free to geographically appropriate numbers, ''as it will (1) reduce confusion, both for service providers and consumers, by making clear the responsibilities of the various parties, and (2) provide that the continued use of toll-free numbers, under specific circumstances, is not prohibited by the Commission.'' The TDI Coalition further states that it ''do[es] not condone the way some iTRS providers have pushed toll free numbers on consumers, and would prefer that in general, consumers use geographically appropriate ten-digit geographic NANP numbers.'' No iTRS provider opposes this proposal. Indeed, CSDVRS—a VRS provider—comments that it ''fully supports this measure as a means to meet the Commission's efforts to encourage the use of local ten-digit numbers, rather than toll free numbers.''

13. Sorenson Communications—the largest VRS provider—comments that it ''does not automatically assign toll-free numbers to its default users, but instead offers consumers the option of obtaining a toll-free number in addition to their ten-digit local number.'' Sorenson further states that ''a default user must affirmatively request a toll-free number in order to receive one. Regardless of whether Sorenson or any other iTRS provider assigns toll free numbers ''automatically,'' we agree with the consumer groups that the widespread assignment of toll free numbers in addition to local numbers continues to cause problems for iTRS users. Therefore, based on the record and consistent with our proposal in the iTRS Toll Free Notice, we revise § 64.611 of the Commission's rules to prohibit iTRS providers from assigning or issuing toll free numbers to users. We expect that requiring an iTRS subscriber to pay for his or her toll free number, and to transfer an already assigned number to a toll free service provider or Responsible Organization (RespOrg) should the subscriber want to keep it, will significantly reduce the number of toll free numbers assigned by iTRS providers.

14. In its comments, Sorenson proposes that iTRS providers be allowed to assign toll free numbers in instances where geographically appropriate numbers are not available. Currently, when a geographically appropriate number is unavailable, an iTRS provider may assign the user a ''geographically approximate'' number, which is a ten-digit number as close to a user's rate center as possible. Sorenson claims, however, that for these iTRS users, ''toll charges can result even for calls placed to the iTRS user by hearing persons—including health care providers, schools, governments and employers—located within the same local calling area.'' Sorenson argues that the Commission should therefore waive its rules to permit the assignment of toll free numbers where geographically appropriate numbers are not available.

15. We disagree with Sorenson that a general waiver is appropriate. A general waiver allowing the assignment of toll free numbers where geographically appropriate numbers are not available would undermine the intent of this proceeding to promote the use of geographically appropriate numbers and to provide iTRS customers with access functionally equivalent to that enjoyed by hearing customers. Furthermore, Sorenson does not demonstrate that, where geographically appropriate numbers are not available, toll free numbers, rather than geographically approximate numbers, are necessary to avoid widespread harm to iTRS users. Once the rules we adopt today become effective, iTRS providers may request waivers on a case-by-case basis, where they believe that the assignment of geographically approximate numbers is an inadequate solution.

16. We also note that Jay Carpenter, member of the North American Numbering Council Future of Numbering Working Group, requests that the Commission postpone adopting any rules with respect to the distribution of toll free numbers for iTRS. Mr. Carpenter asserts that issues raised in the iTRS context with respect to toll free numbers are ''symptomatic of a general need within the toll free telephone number industry.'' Mr. Carpenter requests that we delay this proceeding for six months while the toll free industry has ''vetted'' a white paper drafted by the North American Numbering Council Future of Numbering Working Group. Although we applaud efforts made by the working group to address issues of the toll free industry, we find that issues raised in the instant proceeding regarding distribution of toll free numbers for iTRS are distinct and severable from those raised in the Commission's general toll free docket, CC Docket No. 95–155.

17. *Continuing Use of and Access to Toll Free Numbers.* In the iTRS Toll Free Notice, we stated that iTRS users should have the same access to toll free numbers that hearing users have, and that any iTRS user who wants to keep a toll free number that has been issued by an iTRS provider may do so. We proposed a rule requiring that at the user's request, an iTRS provider must facilitate the transfer of the user's toll free number to a direct subscription with a toll free service provider or RespOrg. Under this approach, the iTRS user would become a customer of the toll free service provider, and the iTRS provider that originally provided the toll free number would have no continuing role in administering that number. The consumer groups support this proposal, ''so long as those measures do not cause undue disruption to consumer services.'' We agree, and we expect that the rules we adopt in this Order can be implemented without significant disruption to the iTRS user. Accordingly, we adopt the rule we proposed in the iTRS Toll Free Notice, which will allow an iTRS user to maintain his or her toll free number by transferring such number to a toll free service subscription.

18. Sorenson asserts that the iTRS Toll Free Notice ''does not propose, and should not be interpreted to propose, a prohibition of VRS providers acting as RespOrgs or interexchange carriers, or entering into sales and marketing relationships with RespOrgs or interexchange carriers.'' Commission rules do not prohibit iTRS providers from serving as or entering into business relationships with RespOrgs or interexchange carriers. We emphasize, however, that any provision of toll free numbers by iTRS providers must be consistent with the rules that we adopt in this proceeding. Moreover, we will closely monitor the implementation of these rules to ensure that iTRS customers routinely use local numbers as their primary telephone numbers. We will take action, if necessary, to ensure that iTRS providers and other entities do not induce iTRS customers to obtain or maintain toll free numbers. For example, the provision by iTRS

providers of toll free numbers or toll free calling at no charge to iTRS customers, or efforts by iTRS providers to market toll free numbers to iTRS customers, would contravene the Commission's goals in this proceeding.

19. *No Support for Toll Free Numbers from TRS Fund.* The Commission has previously concluded that the costs associated with assigning and providing to iTRS users toll free numbers are not compensable from the TRS Fund. Thus, should an iTRS user choose to transfer his or her toll free number from an iTRS provider to a toll free service provider (or obtain a toll free number directly from a toll free service provider or RespOrg), the user would assume responsibility for all costs associated with the toll free number.

20. The consumer groups agree that iTRS users should pay for their own toll free numbers. CSDVRS also agrees that iTRS users should pay for costs associated with toll free number subscription. Sorenson argues that ''[r]equiring consumers to pay for toll-free service is likely to force at least some consumers to relinquish their access to toll-free numbers, thus degrading their service.'' We disagree that requiring iTRS users to pay for toll free service would ''degrade'' service. Rather, this approach is consistent with the functional equivalency requirement of section 225 of the Act because it aligns toll free use by iTRS users with toll free use by hearing customers. We agree with Sorenson that if it is not economically worthwhile for an iTRS user to pay for his or her own toll free number, then he or she will likely relinquish the number. However, this economic decision is no different for deaf and hard-of-hearing users than for hearing consumers.

21. While CSDVRS agrees that iTRS users should be responsible for the costs associated with a toll free number, it suggests that ''in the interests of maintaining equal access to the use of toll free numbers by deaf, hard-of-hearing, and deaf-blind individuals * * * the FCC set a minimum allowable price charged to an iTRS consumer for a toll free number at $9.95 per month.'' We do not believe, however, that functional equivalency requires the establishment of a minimum allowable price for toll free service to iTRS users when there is no comparable minimum price for toll free service to hearing users. Accordingly, we decline to adopt CSDVRS's proposal.

22. *Transfer of Toll Free Numbers.* Section 251(e)(1) of the Act grants the Commission exclusive jurisdiction over ''those portions of the North American Numbering Plan that pertain to the United States.'' The Act also requires the Commission to ''ensure the efficient, fair, and orderly allocation of toll-free numbers.'' All telephone numbers are a public resource and neither carriers nor subscribers ''own'' their telephone numbers. Under the Commission's rules, toll free numbers are made available to end users on a first-come, first-served basis unless otherwise directed by the Commission. Several commenters state that in order to effectuate the transfer of the iTRS toll free numbers from the iTRS provider to the toll free service provider, the Commission must waive its first-come, first-served policy.

23. Section 52.111 of the Commission's rules authorizes the Commission to direct assignment of toll free numbers on a basis different than the usual first-come, first-served basis. Moreover, the Commission has authority to waive any provision of its rules for good cause shown. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.

24. To fully implement the Commission's numbering system for iTRS users and to ensure that iTRS users have the same access to toll free numbers as hearing users, we waive the first-come, first-served rule for the limited purpose of enabling those iTRS users who wish to continue to use their existing toll free numbers to do so. Under the ordinary operation of the Commission's numbering rules, when an end user relinquishes a toll free number, that number is returned immediately to the number pool before it is reassigned. Accordingly, under the first-come, first-served rule, when a toll free number is transferred from an iTRS provider to a toll free service provider, the iTRS user may not be able to retain his or her toll free number because the number may be assigned to someone else. To prevent this potential disruption, we waive our first-come, first-served rule, § 52.111 of the Commission's rules, to allow iTRS users to transfer their existing toll free numbers to a toll free service provider. This limited waiver will remain in place during the one-year transition period that we establish in this Order and will thus expire one year after the effective date of this Order. By the time this waiver expires, all iTRS users who want to keep their existing toll free numbers will have had a reasonable opportunity to transfer those numbers to a direct subscription with a toll free service provider.

25. *Toll Free Numbers in the iTRS Directory.* We proposed in the iTRS Toll Free Notice that if a deaf or hard-of-hearing person obtains a toll free number from a toll free provider, the number would also be mapped to the user's local number in the iTRS Directory. This approach would allow such users to be reached at a toll free number both by other deaf and hard-of-hearing users on direct calls that are completely Internet-based, and by hearing users who ''dial around'' the user's default provider. The record supports this approach. Accordingly, we adopt the proposal in the iTRS Toll Free Notice and revise § 64.613 of our rules to require that iTRS providers ensure that the toll free number of a user associated with a geographically appropriate NANP number will be associated with the same URI as that geographically appropriate NANP number.

26. This requirement should eliminate problems involving service disruption when toll free numbers are not directly linked to the associated local numbers in the iTRS Directory. We note that Neustar—the administrator for the iTRS Directory—has recommended a process or mapping toll free numbers to local numbers through the Canonical Name (CNAME) Resource Record. Neustar's comments highlight that the mapping function is feasible. The Commission, through its contracting process, will determine the best method to implement its new iTRS toll free rules.

27. We find that adopting this rule addresses the concerns raised in CSDVRS's Petition for Expedited Reconsideration of the Toll Free Clarification Public Notice as well as the TDI Coalition's Petition for Emergency Stay and a Request to Return to the Status Quo Ante. CSDVRS and the TDI Coalition had expressed concern that the Commission's clarification that any toll free number retained or acquired by an iTRS user must be directed to the user's local number in the Service Management System (SMS)/800 database would cause service disruption and undermine functional equivalency for iTRS users. The specific requirement that a toll free number associated with a geographically appropriate NANP number be associated with the same URI as that geographically appropriate NANP number will alleviate any service disruption or problems completing point-to-point calls and therefore, we dismiss these petitions as moot.

28. *Transition Period.* In the iTRS Toll Free Notice, we proposed a one-year transition period to allow a reasonable period for consumer outreach and education to transition consumers from toll free numbers to local numbers. This proposal was unanimously supported in

the record. Specifically, the TDI Coalition commented that the ''Commission's proposed transition plan of one year is reasonable, and indeed, necessary.'' CSDVRS also agrees with the Commission's one-year transition plan proposal, stating it will ''allow ample time for providers to undertake consumer outreach and any necessary technological adjustments.'' Sorenson also agrees.

29. Based on the record, we find that a one-year transition is appropriate. During this transition period, the Commission will work diligently to educate iTRS users about the transition plan. We expect that consumer groups and iTRS providers will do the same. We also agree with the consumer groups that this time can be used to allow iTRS users who wish to relinquish their toll free numbers to inform their family, friends and other correspondents that they must be called on their geographic numbers and allow those iTRS users who wish to maintain their toll free number to transition to a toll free subscribership. We therefore adopt the one-year transition period proposed in the iTRS Toll Free Notice. This transition period will expire one year after the effective date of the rules we adopt today. By that date, iTRS providers must remove from the iTRS Directory any toll free number that has not been transferred to a subscription with a toll free service provider and for which the user is the subscriber of record at the end of the transition period. iTRS providers must also, by the end of the transition period, ensure that the toll free number of a user that is associated with a geographically appropriate NANP number is associated with the same URI as that geographically appropriate NANP telephone number in the iTRS Directory.

30. *Removing Non-Selected Toll Free Number from the iTRS Directory.* In the iTRS Toll Free Notice, we emphasized that an important outcome of this proceeding was to ''cleanse'' the iTRS Directory of extra or unwanted toll free numbers at the end of the transition period. We proposed that any toll free numbers that have not been mapped to local numbers in the SMS/800 database by a toll free service provider be removed from the iTRS Directory at the end of the transition period. There is support in the record for removing such numbers from the iTRS Directory at the end of the transition period, and no commenter opposed this proposal. Thus, we adopt a rule requiring that iTRS providers, within one year after the effective date of this Order, remove from the iTRS Directory any toll free numbers that have not been mapped to local numbers in the SMS/800 database, and have not been mapped directly to a local number in the iTRS Directory by the iTRS provider.

31. The Commission also sought comment on whether it should establish a process whereby during the transition period, iTRS users who know that they do not want their toll free number(s) could request that those numbers be deleted from the iTRS Directory. Although we received no comment on this specific issue, we find that, should an iTRS user wish to relinquish his or her toll free number at any time during the one-year transition period, the iTRS provider should facilitate the request and delete the number from the iTRS directory. If the user makes an affirmative request, there should be no service disruption. Moreover, such a process will help cleanse the database on an ongoing basis. Thus, we adopt the proposal. We find that this clean-up of the iTRS Directory is not unduly burdensome. Moreover, it will provide the Commission with clearer indications of how relay services are being used to serve the deaf and hard-of-hearing community and the extent to which that community is using toll free numbers.

32. *Consumer Outreach.* The record in this proceeding reinforces the Commission's view that the success of the Commission's new iTRS toll free numbering rules will be enhanced by outreach efforts by consumer groups, as well as by iTRS providers and the Commission. We recognize that deaf and hard-of-hearing individuals may be accustomed to the current process for obtaining toll free numbers and that any change will require substantial education and outreach. We do not seek to impose overly burdensome obligations on any one sector involved, and seek instead to share the responsibilities, with the highest priority being to fully inform the iTRS community of the transition.

33. We agree with the consumer groups that the iTRS providers are on the ''front line'' of the outreach effort as they have the most interaction with iTRS users. However, there appears to be disagreement in the record as to whether iTRS providers should be responsible for providing toll free terms and conditions to users. The consumer groups want iTRS providers and toll free service providers to ''fully inform the customers of the terms and conditions associated with the use of the toll free number.'' Sorenson, on the other hand, argues that unless it ''is the toll free consumer's chosen [toll free service] provider, Sorenson should not bear any responsibility for disclosing the terms and conditions associated with the service.''

34. Under the user notification rule we adopt, every iTRS provider must include certain information on its Web site as well as in any promotional materials. Providers must clearly explain, in layman's terms, the process by which a user may acquire a toll free number from a toll free service provider, or transfer a toll free number from an iTRS provider to a toll free service provider or RespOrg. The notification must include contact information for toll free service providers so that users may easily access necessary information. Such contact information will also be available from consumer groups and the Commission. iTRS providers must also provide information on how an iTRS user may request that his toll free numbers be linked to his ten-digit telephone numbers in the iTRS Directory.

35. The Commission will play a significant role in consumer outreach and education efforts. In the iTRS Toll Free Notice, the Commission had asked for comment on how to make information about the availability and use of toll free numbers available to iTRS users, such as fact sheets and Web sites. Commenting consumer groups recommend that iTRS providers' Web sites should ''include contact information for the appropriate FCC consumer information portals to provide additional sources of information on the transition plan.'' Moreover, CSDVRS suggests that ''a central repository of information'' be created on the Commission's Web site, along with a posting on all provider Web sites, ''similar to that required for E911.'' We find both to be useful suggestions. Thus, we conclude that providers must post on their Web sites contact information for toll free service providers. The Commission will also provide this information on its Web site. We encourage consumer groups also to provide this information.

36. *Toll Free Waiver Order.* Since December 2009, the Commission has waived the portion of the Toll Free Clarification Public Notice that stated that toll free numbers and ten-digit geographic numbers should not be directed to the same URI in the iTRS Directory. The Commission's waiver is set to expire today. We hereby extend the waiver, effective immediately, until February 6, 2012, to allow the rules set forth in this Order to become effective, including the necessary information collection approvals. We find that the rules, once effective, will achieve the policy goals of this proceeding and the Commission's iTRS numbering plan.

37. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 225, 251(e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 251(e), and 255, and § 1.3 of the Commission's rules, 47 CFR 1.3, this Report and Order *is adopted,* and that part 64 of the Commission's rules, 47 CFR part 64, *is amended* as set forth in Appendix A. The Report and Order shall become effective October 27, 2011 except for §§ 64.611(e)(2), 64.611(e)(3), 64.611(g)(1)(v), 64.611(g)(1)(vi), and 64.613(a)(3), which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date(s).

38. *It is further ordered* that, pursuant to sections 1, 4(i), 4(j) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j) and 251(e), and §§ 1.3 and 52.111 of the Commission's rules, 47 CFR 1.3 and 52.111, a waiver of the Commission's first-come, first-served rule, 47 CFR 52.111, *is granted* for a period of one year after the effective date of this Order, to allow iTRS users to transfer their existing toll free numbers to new toll free subscribership.

39. *It is further ordered* that the Commission's requirement that toll free numbers and ten-digit geographic numbers not be directed to the same URI in the iTRS Directory *is waived,* effective upon release of this Report and Order, until February 6, 2012.

40. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 225, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 303(r), the Petition for Expedited Reconsideration filed by CSDVRS LLC on September 10, 2009, in CG Docket No. 03–123, CC Docket No. 98–67, and WC Docket No. 05–196 *is dismissed as moot.*

41. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 225, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 303(r), the Petition for Emergency Stay filed by the TDI Coalition in CG Docket No. 03–123, WC Docket No. 05–196 on October 27, 2009 and the Request for Return to the Status Quo Ante filed by the TDI Coalition in CG Docket No. 03–123 and WC Docket No. 05–196 on November 12, 2009 *are dismissed as moot.*

42. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k), 227; secs. 403(b)(2)(B)(c), Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.611 is amended by:

■ a. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);

■ b. Adding a new paragraph (e);

■ c. Removing ''and'' from the end of newly designated paragraph (g)(1)(iii);

■ d. Removing the period from the end of newly designated paragraph (g)(1)(iv) and adding '';'' in its place; and

■ e. Adding paragraphs (g)(1)(v) and (g)(1)(vi) to read as follows:

§ 64.611 Internet-based TRS registration.

* * * * *

(e) *Toll free numbers.* A VRS or IP Relay provider:

(1) May not assign or issue a toll free number to any VRS or IP Relay user.

(2) That has already assigned or provided a toll free number to a VRS or IP Relay user must, at the VRS or IP Relay user's request, facilitate the transfer of the toll free number to a toll free subscription with a toll free service provider that is under the direct control of the user.

(3) Must within one year after the effective date of this Order remove from the Internet-based TRS Numbering Directory any toll free number that has not been transferred to a subscription with a toll free service provider and for which the user is the subscriber of record.

* * * * *

(g) * * *

(1) * * *

(v) The process by which a VRS or IP Relay user may acquire a toll free number, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and

(vi) The process by which persons holding a toll free number request that the toll free number be linked to their ten-digit telephone number in the TRS Numbering Directory.

* * * * *

■ 3. Section 64.613(a) is amended by revising paragraphs (a)(1) and (a)(2), redesignating paragraph (a)(3) as paragraph (a)(4) and adding a new paragraph (a)(3) to read as follows:

§ 64.613 Numbering directory for Internet-based TRS users.

(a) * * *

(1) The TRS Numbering Directory shall contain records mapping the geographically appropriate NANP telephone number of each Registered Internet-based TRS User to a unique Uniform Resource Identifier (URI).

(2) For each record associated with a VRS user's geographically appropriate NANP telephone number, the URI shall contain the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

(3) Within one year after the effective date of this Order, Internet-based TRS providers must ensure that a user's toll free number that is associated with a geographically appropriate NANP number will be associated with the same URI as that geographically appropriate NANP telephone number.

* * * * *

[FR Doc. 2011–23824 Filed 9–26–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–118 and DA 11–1590]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission gives notice of two Petitions for Reconsideration (Petitions) filed in the Commission's rulemaking proceeding concerning Structure and Practices of the Video Relay Service Program, Second Report and Order and Order in CG Docket No. 10–51 (Second Report and Order), and sets an expedited schedule for filing oppositions and replies. In light of impending deadlines for initial and

recertification Video Relay Service (VRS) applications, and to avoid waste, fraud, and abuse in the VRS program, the Commission finds that good cause exists in this instance to alter the comment periods specified in the Commission's rules.

DATES: Oppositions to the Petitions are due on or before October 7, 2011. Replies to oppositions are due on or before October 12, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, (202) 559–5158 (VP), or e-mail, *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of document DA 11–1590, released September 22, 2011. The full text of document DA 11–1590 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during normal business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington DC 20554. Document DA 11–1590 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at its Web site, *http://www.bcpiweb.com,* by calling (800) 378–3160 or (202) 863–2893, by facsimile at (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.*

Oppositions and Replies. Pursuant to § 1.429 of the Commission's rules, interested parties may file oppositions and replies to an opposition on or before the dates indicated on the first page of this document. Such pleadings may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket number of this proceeding, CG Docket No. 10–51. The oppositions and replies filed in response to document DA 11–1590 will be available via the ECFS at: *http://fjallfoss.fcc.gov/ecfs2/;* you may search by docket number (CG Docket No. 10–51).

- Oppositions and replies may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 10–51.
- Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

Ex Parte Proceeding

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. *See* 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Congressional Review Act

The Commission will not send a copy of document DA 11–1590 pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because it does not have an impact on any rules of particular applicability.

Synopsis

1. Notice is hereby given that the parties listed have petitioned the Commission for reconsideration and clarification of the *Second Report and Order* in CG Docket No. 10–51, FCC 11–118, published at 76 FR 47469, August 5, 2011. In the *Second Report and Order,* the Commission required that, as part of their initial iTRS certification applications and in annual updates, VRS providers describe the technology and equipment used to support their call center functions (including but not limited to automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the Interstate TRS Fund (TRS Fund), and registration), and for each core call center function, state whether it is owned or leased, and from whom if leased or licensed, and provide proofs of purchase, license agreements, or leases; and (2) a list of all sponsorship or marketing arrangements and associated agreements relating to iTRS.

2. The *Second Report and Order* also adopted a requirement that, in order to receive certification from the Commission, which is necessary to be eligible to receive compensation from the TRS Fund, all iTRS providers must operate their own calling facilities and employ their own communication assistants. In addition, the *Second Report and Order* adopted a requirement that any VRS provider that

is leasing an automatic call distribution (ACD) platform from an eligible provider or from a third-party non-provider must have a written lease for such ACD platform and must include a copy of such written lease with its application for certification, and that a VRS provider leasing an ACD platform from an eligible provider must locate the ACD platform on its own premises and must use its own employees to manage the ACD platform.

3. Providers currently eligible for compensation from the TRS Fund via a means other than Commission certification must apply for certification within 30 days after the rules adopted in the *Second Report and Order* become effective, and providers with Commission certifications expiring November 4, 2011 must apply for recertification after the rules become effective but at least 30 days prior to their expiration provided that the rules are effective by that date, or risk having to shut down their operations and being denied compensation from the TRS Fund. In light of these impending deadlines for initial and recertification applications, and to avoid waste, fraud, and abuse in the VRS program, the Commission finds that good cause exists in this instance to alter the comment periods specified in § 1.429 of the Commission's rules. *See* 47 CFR 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown, and on the Commission's own motion).

Listed below are the parties filing petitions for reconsideration and clarification of the Second Report and Order and Order in CG Docket No. 10–51:

Sorenson Communications, Inc. (September 6, 2011).

AT&T Services, Inc. (September 6, 2011).

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–24860 Filed 9–26–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 101

[WT Docket No. 10–153; FCC 11–120]

Facilitating the Use of Microwave for Wireless Backhaul and Other Uses and Providing Additional Flexibility To Broadcast Auxiliary Service and Operational Fixed Microwave Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission continues its efforts to increase flexibility in the use of microwave services licensed under our rules. This additional flexibility will enable FS licensees to reduce operational costs, increase reliability, and facilitate the use of wireless backhaul in rural areas. The steps we take will remove regulatory barriers that limit the use of spectrum for wireless backhaul and other point-to-point and point-to-multipoint communications. We also make additional spectrum available for wireless backhaul—as much as 650 megahertz—especially in rural areas, where wireless backhaul is the only practical middle mile solution. By enabling more flexible and cost-effective microwave services, the Commission can help accelerate deployment of fourth-generation (4G) mobile broadband infrastructure across America.

DATES: Effective October 27, 2011, except for 47 CFR 74.605, which contains new or modified information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet at *JudithB.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: John Schauble, Wireless Telecommunications Bureau, Broadband Division, at 202–418–0797 or by e-mail to *John.Schauble@fcc.gov.* For additional information concerning Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Backhaul Report and Order and Memorandum Opinion and Order (Backhaul R&O, Backhaul MO&O), FCC 11–120, adopted and released on August 9, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of the *Backhaul Report and Order and Memorandum Opinion and Order* and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or (800) 387–3160, contact BCPI at its Web site: *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 11–120. The complete text of the *Backhaul Report and Order and Memorandum Opinion and Order* is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-120A1.doc.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

I. Introduction

1. Broadband is indispensable to our digital economy, and wireless technology is an increasingly important source of broadband connectivity. A leading example of the role of wireless technology in connecting the nation to broadband is the impact and potential of point-to-point microwave systems. An essential component of many broadband networks—particularly in mobile wireless networks—microwave backhaul facilities are often used to transmit data between cell sites, or between cell sites and network backbones. Service providers' use of microwave links as a cost-effective alternative to traditional copper circuits and fiber optic links has been increasing. In certain rural and remote locations, microwave is the only practical high-capacity backhaul solution available.

2. A robust broadband ecosystem therefore relies, at least in part, on access to adequate and cost-efficient

backhaul. In this *Report and Order,* we continue our efforts to increase flexibility in the use of microwave services licensed under our part 101 rules. The steps we take will remove regulatory barriers that today limit the use of spectrum for wireless backhaul and other point-to-point and point-to-multipoint communications. We also make additional spectrum available for wireless backhaul—as much as 650 megahertz—especially in rural areas, where wireless backhaul is the only practical middle mile solution. By enabling more flexible and cost-effective microwave services, the Commission can help accelerate deployment of fourth-generation (4G) mobile broadband infrastructure across America.

Background

3. The Commission has licensed spectrum for microwave uses for most of its history. In 1996, the Commission consolidated its rules for most microwave point-to-point and point-to-multipoint services into a new part 101 of the Commission's rules. Two specialized microwave services in particular—the Broadcast Auxiliary Service (BAS) and the Cable TV Relay Service (CARS)—have not been consolidated into part 101. Part 101 includes the point-to-point Private Operational Fixed Service (POFS) and the Common Carrier Operational Fixed Service. The Commission's licensing regime for these two services requires frequency coordination and the filing of an application for each microwave link or path containing detailed information concerning the proposed operation.

4. On August 5, 2010, the Commission commenced this proceeding ''to remove regulatory barriers to the use of spectrum for wireless backhaul and other point-to-point and point-to-multipoint communications.'' In the *NPRM,* the Commission sought comment on allowing FS to share the 6875–7125 MHz and 12700–13200 MHz bands currently used by BAS and CARS. The Commission also proposed to eliminate the ''final link'' rule that prohibits broadcasters from using FS stations as the final radiofrequency (RF) link in the chain of distribution of program material to broadcast stations. The Commission further proposed to modify the part 101 minimum payload capacity rule to allow temporary operations below the minimum capacity under certain circumstances, which would enable FS links—particularly long links in rural areas—to maintain critical communications during periods of fading. In the final portion of the *NPRM,* the Commission sought comment on permitting FS licensees to coordinate and deploy multiple links—a primary link and ''auxiliary'' links. In the *NOI,* the Commission asked about relaxing efficiency standards in rural areas, permitting FS licensees to use smaller antennas, and other possible modifications to the part 101 rules, or other policies or regulations, to promote flexible, efficient and cost-effective provisions of wireless backhaul service.

5. Comments on the *Wireless Backhaul NPRM/NOI* were due October 25, 2010, and reply comments were due November 22, 2010. In addition, on June 7, 2011, the Wireless Telecommunications Bureau issued a public notice that provided additional analysis of the existing BAS and CARS operations in the 7 and 13 GHz bands and requested supplemental comment on issues relating to FS sharing in the 6875–7125 MHz and 12700–13200 MHz bands. Supplemental comments were due on June 27, 2011.

II. Report and Order

A. Making 6875–7125 MHz and 12700–13150 MHz Available for Part 101 FS Operations

6. After a careful review of the comments, we conclude that it is feasible to authorize part 101 fixed stations in 650 megahertz in the 7 and 13 GHz bands, so long as we ensure that these operations do not conflict with TV pickup stations that support important electronic newsgathering functions. As we explain in further detail below, we will therefore permit FS facilities only in areas where TV pickup operations are not licensed. As discussed below, our actions will permit additional FS stations in areas covering more than half of the nation's land mass, where they may be used to provide additional service to about 10 percent of the population.

7. BAS and CARS stations fall into one of two categories: those that remain in one place (fixed) and those that move among different locations (mobile or temporary fixed). Mobile BAS and CARS include television pickup stations, which are authorized to transmit program material, orders concerning such program material and related communications from the scenes of events that occur in places other than a television studio to associated television stations. Under current rules, which were adopted in 2002, all FS and fixed BAS and CARS stations above 2110 MHz use the prior coordination notice procedure described in § 101.103(d) of the Commission's rules, but mobile and temporary fixed BAS and CARS may use faster informal coordination procedures. TV pickup stations in these bands are usually licensed either for a specified radius around a set of coordinates or for a television market.

8. The record indicates that it is not feasible to allow FS to share spectrum with mobile and temporary fixed TV pickup operations in areas where mobile and temporary fixed TV pickup operations are licensed. While BAS fixed and mobile operations share spectrum in the same geographic areas, the sharing that exists today would not be practicable if it were not guided by informal agreements among local market participants. Part 101 FS operators do not have the same incentive to accommodate the needs of TV pick-up operations, however, as few of them are involved in video newsgathering or video coverage of other live events. For that reason, if they were granted the same formal priority over TV pick-up operations that broadcasters' STL and ICR stations are entitled to claim under existing rules, FS operators could apply for spectrum that is presently used by TV pick-up operations—potentially precluding new TV pick-up operations and forcing existing operations to shut down. The National Spectrum Management Association (NSMA) points out that in bands that are already shared by BAS, CARS, and part 101 licensees, the bands are generally used for either fixed or mobile operations, but not both.

9. We also conclude that it is not feasible at this time to adopt a formal band segmentation plan to separate fixed and mobile operations into designated sub-bands of the 7 and 13 GHz bands, as requested by the Fixed Wireless Communications Coalition (FWCC) and Vislink, Inc. The several bands allocated for BAS and CARS today support a mix of fixed, temporary fixed, and mobile services, including airborne mobile, and comments submitted in this proceeding confirm that BAS and CARS users coordinate these services on an individual market basis, without benefit of a formal nationwide plan, to assign the different types of service (fixed, mobile, airborne) to specific band segments. A portion of the band used in one market for fixed operation may commonly be used for mobile operation in another. Thus, to avoid disrupting those arrangements, we would need to tailor any band segmentation approach that we adopted to the needs and conditions of individual markets. Since we could not adopt a uniform band plan throughout the nation and provide the same spectrum to FS throughout the nation,

the value of such band segmentation would be quite limited.

10. For areas where TV pickup licenses are not authorized, however, we conclude that sharing between part 101 FS and fixed BAS operations is feasible. WTB staff conducted additional analysis to determine whether it would be feasible for those services to share spectrum if they were separated geographically. The analysis appears to indicate that, even if FS operations were totally excluded from the service areas of TV pickup stations and CARS facilities, there would be considerable areas where FS facilities could be licensed—54 percent of the land area in the 7 GHz band and 64 percent of the land area in the 13 GHz band—largely located in more rural areas, especially in the midwestern and western regions. For each band, FS facilities could serve about 10 percent of the population. Thus, opening the 7 and 13 GHz bands to FS operations could be of particular benefit in rural areas, where spectrum in the 7 and 13 GHz bands is largely vacant.

11. To avoid interference between FS operations and TV pickup operations, we prohibit FS paths from crossing the service areas of TV pickup authorizations and require FS to coordinate with all relevant licensees, including TV pickup authorizations, pursuant to the formal part 101 coordination procedures. EIBASS, the National Association of Broadcasters (NAB), and the Wireless Internet Service Providers Association (WISPA) believe that such an arrangement would be workable. We also note the presence of co-primary fixed satellite services (FSS) in these bands. FS applicants will be required to coordinate with and protect FSS licensees and applicants pursuant to the part 101 rules.

12. The FWCC and SBE remain concerned about potential interference issues, particularly given the ability of broadcasters to operate short-term without a license. Under our rules, broadcasters can operate certain BAS facilities on a short-term basis without prior authorization for up to 720 hours a year subject to various limitations, including the fact that such short-term operation is secondary to regularly authorized facilities. We believe that such operations can be accommodated by excluding FS from two 25-megahertz channels each in the 7 GHz band (6975–7025 MHz) and the 13 GHz band (13150–13200 MHz). Excluding FS from that spectrum nationwide will accommodate TV pickup stations covering events that occur outside the license areas of local BAS and CARS operations. For the 7 GHz Band, we choose to exclude the 6975–7025 MHz segment because excluding the middle of the band will allow for greater separation between FS transmit and receive frequencies. For the 13 GHz Band, we exclude 13150–13200 MHz because that spectrum is already reserved for television pickup operations in the top 100 markets. Furthermore, since such short-term operation is by definition secondary to other operations, broadcasters operating pursuant to § 74.24 have no right to claim interference protection from regularly authorized operations.

13. EIBASS and NAB propose additional conditions that we do not believe are necessary or appropriate. EIBASS asks that the Commission impose a requirement that the newcomer POFS station cannot degrade the noise threshold of any existing ENG–RO site by more than 0.5 dB. Although EIBASS's proposal may be an appropriate standard for evaluating a proposed FS facility, we decline to adopt it as part of our rules. Generally, in lieu of mandating specific interference criteria in our rules, we expect applicants and licensees to work out interference issues in the frequency coordination process. In addition, NAB asks that the Commission impose secondary status on FS operations in the 7 and 13 GHz Bands with respect to both existing and future BAS operations. We find that the rules we adopt fully protect existing BAS operations. With respect to future BAS operations, FS, BAS, and CARS will all be coprimary services required to protect pre-existing operations. We agree with NAB that there is an important public interest in broadcasters being able to report on breaking news events and emergency situations; but we also find there to be important public interests in the support that FS provides to vital broadband, public safety, and critical infrastructure uses.

14. We also find that FS operations would be compatible with fixed BAS operations. In 2002, the Commission amended Parts 74 and 78 of its rules to harmonize many of the rules governing BAS and CARS with rules that already applied to FS licensees under part 101, allowing the use of digital transmissions, and requiring all fixed station applicants, except for those proposing operations in the 1990–2110 MHz band, to provide affected licensees and contemporaneous applicants with 30-day prior notifications and an opportunity to participate in frequency coordination before filing their applications with the Commission. It applied part 101 frequency coordination procedures to fixed BAS and CARS, and it did so with wide support from the affected industries. It rejected the request of one participant, SBE, that fixed BAS and CARS be allowed to continue relying upon informal coordination procedures. The subsequent ongoing shift from analog to digital transmission has accelerated the erosion of technical distinctions between BAS, CARS, and part 101 FS, and the use of consistent procedures for fixed stations in all of those services has played a vital role in the Commission's efforts to accommodate the increasing demand for closely-packed microwave links in urban areas.

15. We will allow mobile TV pickup licensees to continue to use informal coordination procedures within their service areas. Given the urgency of electronic newsgathering operations and the long history of successful real-time frequency coordination provided by local coordinators, the Commission previously found that there was little potential that interference would result from its continued function without imposing the formality of § 101.103(d) procedures. In light of our decision not to allow FS within the service areas of mobile BAS/CARS stations, there is no reason to require those stations to use formal coordination procedures.

16. The rules we adopt today will open most of the 7 and 13 GHz bands to FS over more than half of the nation's land mass where 10 percent of the population lives, while applying geographic restrictions on FS in those bands to minimize the potential for interference between FS facilities and TV pickup stations. Specifically, as reflected in the rules in Appendix A, we will allow part 101 FS stations to share the 7 and 13 GHz bands subject to the following conditions:

(1) We will not allow FS stations in the 7 and 13 GHz bands to locate their paths within the service areas of any previously licensed co-channel TV pickup stations.

(2) We will require FS operators to coordinate any new fixed links with TV pickup stations within the appropriate coordination zones of any new fixed links.

(3) As we require in other bands that fixed BAS and CARS share with part 101 fixed services, we will require all fixed BAS, fixed CARS and part 101 FS stations in the 7 and 13 GHz bands to engage in the same frequency coordination process that we require of all part 101 services.

(4) We will also reserve two 25-megahertz channels for BAS and CARS in the 7 GHz band (6975–7125 MHz) and two 25-megahertz channels in the

13 GHz band (13150–13200 MHz) nationwide to accommodate TV pickup stations covering events that occur outside the license areas of local BAS and CARS operations.

17. Regarding the various alternative channelization plans proposed in the *NPRM* and the *7 and 13 GHz Public Notice,* we have decided to retain the 25 megahertz bandwidth that presently applies to the 7 and 13 GHz bands, as this channel-width best conforms to existing operations in the band. We recognize that FWCC recommends a mix of 10, 20, and 30 megahertz channels similar to those available in other FS bands and asserts that such alignment will result in more readily available equipment. As FWCC and others have recognized, however, allowing 10 and 30 megahertz channels in a band with many pre-existing 25 megahertz channels would preclude operation on multiple 25 megahertz channels, resulting in wasted spectrum. Many commenters recommend retaining a band plan based on the 25 megahertz channel bandwidth in order to prevent such wasted spectrum. To provide for a mix of larger and smaller channel-widths, we adopt an alternative proposal suggested by FWCC and permit FS to utilize 5, 8.33, and 12.5 megahertz channels.

18. We also adopt WISPA's proposal to allow 50 megahertz channels in the 13 GHz Band. Since the 50 megahertz channels will be created from two 25 megahertz channels, we do not see any inefficiency that would result from 50 megahertz channels. We do not authorize 50 megahertz channels in the 7 GHz Band because of the limited amount of spectrum available in that band.

19. In addition, as proposed in the *NPRM,* we apply the existing FS minimum capacity and loading requirements to FS operators in the 6875–7125 and 12700–13200 bands. We do not propose to apply those requirements to operations that are authorized under Parts 74 and 78, and we maintain the existing exemption from the capacity and loading requirements of part 101 for transmitters carrying digital video motion material. With respect to the remaining proposed technical rules for FS operation, we shall apply the same technical parameters that currently apply in the Upper 6 GHz band to the adjacent 6875–7125 MHz band, as proposed in the *NPRM,* because those bands are contiguous and should be able to use similar equipment. As noted above, we believe that applying the rules currently applicable in the Upper 6 GHz band to the 6875–7125 MHz band will facilitate equipment development and provide consistency to FS licensees. Specifically, we will apply: (1) A maximum frequency tolerance of 0.005 percent; (2) a maximum transmitter power of +55 dBw; (3) the antenna standards currently applicable to Upper 6 GHz Band stations authorized after June 1, 1997, to the 6875–7125 MHz band; (4) the capacity and loading requirements contained in § 101.141(a)(3) of the Commission's rules; and (5) the 17 kilometer minimum path length requirement of § 101.143. We retain the rules that are already applicable to the 12700–13000 MHz band, with the exception of applying the minimum payload capacity and loading requirements that currently apply in the 11 GHz band to the 12700–13150 MHz band. Finally, with the addition of part 101 fixed services in the BAS bands, we believe it is necessary for our ULS database to include all fixed receive locations. We therefore will require BAS TV pickup licensees to record their stationary receive-only sites in ULS.

20. We do not believe that allowing FS sharing in these bands will inhibit geographic expansion of BAS and CARS operations because, as a practical matter, these services have not been expanding geographically in recent years. Only one new BAS TV pickup license has been granted in the 7 GHz and 13 GHz bands in the past two years. Moreover, FWCC reports that BAS and CARS path and channel licensing, respectively, in the 13 GHz band have dropped sharply in the last decade. Furthermore, 50 megahertz of spectrum in each band will remain exclusively for BAS and CARS use, and BAS and CARS applicants will have co-primary status and the ability to apply for new facilities in the shared portions of the bands. We also note that development of new technologies could provide broadcasters with new mechanisms to support of their electronic newsgathering functions in the future. In light of this record, we reject SBE's argument that FS should not be allowed in the 7 and 13 GHz Bands because of a need to preserve spectrum for geographic expansion of BAS and CARS.

21. We find that permitting fixed microwave operations in the 7 and 13 GHz bands will benefit operators and consumers alike and that these benefits outweigh any potential costs, which our rules have been designed to eliminate. Our actions today will enable these spectrum bands to be used more intensively for wireless backhaul, public safety, and other critical uses supported by microwave without limiting their use for BAS or CARS. With this additional spectrum available for their use, fixed microwave operators can establish more links in a given geographic area and increase the capacity of existing links, which in turn will facilitate deployment of wireless broadband services. Although it would be difficult to quantify with precision the benefits of opening the 7 and 13 GHz bands to FS, we find that those benefits outweigh the at most minimal cost of our actions.

22. As a final matter, we reject SBE's allegation that we prejudged the decision to allow FS operations in these bands. We have carefully considered the issues raised concerning sharing between FS and mobile and temporary fixed BAS and CARS, analyzing the record received in response to the NPRM, as well as the record received in response to the Bureau's *7 and 13 GHz Comment Public Notice.* As discussed in detail above, the rules we adopt today are clearly responsive to issues and concerns raised in this record.

B. Elimination of Final Link Rule

23. In the *NPRM,* the Commission sought comment on eliminating the ''final link'' rule, which prohibits broadcasters from using part 101 stations as the final radiofrequency (RF) link in the chain of distribution of the program material to broadcast stations. In other words, the rule prevents the private FS stations from transmitting one type of content (''program material'') to one type of business (broadcasters) at one particular point in the transmission chain (the final RF link). The Commission questioned the sense of maintaining regulatory restrictions based on content as broadcasters and other microwave users move to digital-based systems. It expressed the belief that other existing rules would ensure productive use of spectrum and prevent broadcasters from crowding other FS licensees out of the band. The Commission also asked whether there were alternatives that could facilitate broadcaster access to FS spectrum while retaining the prohibition under certain circumstances.

24. As proposed in the *NPRM,* we herein eliminate the ''final link'' rule. Our action removes from our rules an artificial distinction based solely on the type of content provided and directed solely at one type of business, and is consistent with our decision to allow FS to share in the 7 and 13 GHz BAS and CARS bands. We believe it makes little sense to maintain restrictions based on content as both FS licensees and broadcasters move to digital technologies. Furthermore, FS licensees do not object to elimination of the rule

so long as FS is granted access to BAS and CARS spectrum in the 7 and 13 GHz bands, an action we are also taking in this *Report and Order.* Although AT&T expresses concern about the effect of eliminating the rule on spectrum availability, it does not object to legitimate broadcaster use of FS spectrum that is compatible with existing uses. While broadcasters have different opinions about the value of eliminating the rule, they support doing so.

25. We find that there are significant benefits, and no costs, to eliminating the final link rule. We note that no commenter has identified any cognizable harm that would result from eliminating rule. With increasing adoption of digital technologies, the final link rule has become an outdated regulation that imposes unnecessary costs on broadcasters. In some instances, it may have required broadcasters to build two different, largely redundant, systems: One system to carry program material to the transmitter site, and a separate system to handle other data. Eliminating the rule will provide tangible benefits to broadcasters, by reducing unnecessary duplication of systems and facilities and enabling them to operate more efficiently. In such light, we find the benefits of eliminating the final link rule to be significant.

C. Adaptive Modulation

26. Section 101.141(a)(3) of the Commission's rules establishes minimum payload capacities (in terms of megabits per second) for various channel sizes in certain part 101 bands. The underlying purpose of the rule is to promote efficient frequency use. Requiring links to carry a set amount of traffic (expressed in megabits/second) ensures that licensees will actually use facilities they apply for. Although the Commission has never quantified the time period over which licensees must comply with those standards, the industry has generally construed the payload requirements as applying whenever the link is in service.

27. On May 8, 2009, Alcatel-Lucent, Dragonwave, Inc. Ericsson, Inc., Exalt Communications, FWCC, Harris Stratex Networks and Motorola (''Petitioners'') filed a request for interpretation of the Commission's rules. Petitioners asked the Bureau to interpret § 101.141(a)(3) of the Commission's rules to permit data rates to drop for brief periods below the minimum payload capacity specified in the rules, so long as the values mandated by the rules were maintained both in normal operation and on average. In the *NPRM,* the Commission determined that a rule change was needed to implement the policy interpretation sought in the FWCC Request because the policy interpretation was inconsistent with the plain language of the current rule, which has been interpreted to require compliance with the minimum payload capacity at all times when a system is in operation. The Commission concluded that it would be in the public interest to commence a rulemaking proceeding to facilitate the use of adaptive modulation. It noted that ''[a]llowing carriers to operate below the current efficiency standards for short periods when it is necessary to maintain an operational link, without a need for waiver, could enable carriers to save on costs and enhance reliability of microwave links.'' The Commission also recognized the benefits of allowing communications to be maintained during adverse propagation conditions.

28. The Commission expressed a concern that the standard proposed in the FWCC Request, *i.e.,* requiring compliance with the efficiency standards ''on average'' and ''during normal operation,'' would give licensees too much latitude to deploy inefficient systems. The Commission proposed a rule under which ''the minimum payload capacity requirements must be met at all times, except during anomalous signal fading, when lower capacities may be utilized in order to maintain communications.'' Finally, the Commission asked whether it should specify a minimum amount of time a link should be operational or a minimum efficiency standard below which an FS station may not fall.

29. We conclude that it is in the public interest to amend our rules to facilitate the use of adaptive modulation. Most commenters agree that allowing the use of adaptive modulation will have significant benefits, including (1) Maintaining data throughput better than the zero rate that would otherwise be caused by a fade; (2) continuing to handle critical traffic when the link would otherwise cease to operate; and (3) maintaining network synchronization without the need for a time-consuming reboot. EIBASS, the only party that opposes allowing adaptive modulation, argues that any attempt to define by rule the conditions that justify adaptive modulation would open ''a Pandora's box.'' As discussed below, however, we believe that it is possible to craft rules that allow use of adaptive modulation while maintaining spectrum efficiency.

30. Parties disagree about the protections that will be necessary to ensure that adaptive modulation will not be abused by operators that might seek to save money by operating inefficient links. Supporters of adaptive modulation recognize that there is a potential for abuse and offer a variety of proposals to address that problem. Several of them support the Commission's proposed rule language. FWCC opposes specifying a minimum percentage availability as a prerequisite for adaptive modulation because writing a minimum number into the rules will allegedly limit the freedom of link designers to specify parameters appropriate to a particular objective. It asks the Commission to impose one of several general conditions designed to maximize licensee flexibility. On the other hand, Aviat Networks, Comsearch, Motorola, Sprint, and Verizon argue that the rules should specify a minimum percentage of time when the link would be available, in order to allow use of modulations below the minimum payload capacity. Several parties propose a requirement that paths using adaptive modulation be designed to be available 99.995% or 99.999% of the time while complying with the minimum payload capacity, while FWCC and Motorola propose using a 99.95% standard.

31. In an *ex parte* filing, Verizon argues that a 99.95% standard would undermine the Commission's goal in this proceeding to maximize the opportunity for fixed services to share existing bands. In particular, Verizon asserts that a 99.95% standard would create improper incentives to use smaller and lower performance antennas, which would significantly decrease spectral efficiency and increase the deployment costs and interference to future microwave licensees. Verizon also contends that a lower standard would increase the potential for interference conflicts among wireless backhaul licensees.

32. We determine that applying a 99.95% standard strikes the appropriate balance between providing operators with the flexibility to address anomalous fading conditions while maintaining spectral efficiency. Specifically, we will require applicants seeking permission to use modulations below the minimums established in § 101.141(a)(3) of the Commission's rules to design their paths to be available at modulations compliant with the minimum payload capacity at least 99.95% of the time. In other words, applicants will have to design their paths to operate in full compliance with the capacity and loading requirements for all but 4.38 hours out of the year. A quantitative standard will provide an objective means for determining

compliance with the rules and eliminate some disputes. We are concerned that under FWCC's proposal, as well as the Commission's proposal in the *NPRM,* there would be insufficient safeguards to prevent the deployment of inefficient systems. While we understand FWCC's concern about providing sufficient flexibility to applicants, we do not believe that a 99.95% standard would be overly restrictive, because most paths are designed to a standard of at least 99.95% availability.

33. We decline to apply the 99.999% standard, as Verizon and others advocate, because it would not provide meaningful relief, as it would only anticipate 5.26 minutes a year of impaired operations for a link. With a 99.999% standard, an applicant would be required to build a more expensive system designed to operate through severe weather, which could make deployment cost-prohibitive in some instances. By way of hypothetical, consider a single link in the 6 GHz band that would require 10-foot antennas with a 99.999% standard instead of 6-foot antennas under the 99.95% standard. The total cost increase over a ten-year period in this hypothetical example could exceed $100,000. Furthermore, most systems use multiple links. We believe that the increased reliability and cost savings adaptive modulation will make possible under a 99.95% standard outweigh the marginal costs of a small temporary reduction in spectral efficiency. Therefore, we find the 99.95% standard to be in the public interest.

34. We reject Verizon's arguments that a 99.95% design standard will lead to increased interference or provide improper incentives to deploy inefficient systems. A temporary drop in a data rate, by itself, does not increase interference to other operators. Furthermore, we adopt a series of safeguards designed to protect existing systems. We adopt the *NPRM's* proposal to require licensees that plan to use adaptive modulation to indicate their intent in prior coordination notices. We agree with FWCC and AT&T that such a requirement will help the industry catch possible abuses and address any potential issues through the coordination process before the facilities are authorized. We will also require applicants to apply for all modulations they intend to use as part of their authorizations. Under the rule we adopt today, adaptive modulation can only be used during periods of anomalous signal fading, and the use must be necessary to allow licensees to maintain communications. Furthermore, systems must be designed to operate in full compliance with our existing capacity and loading requirements for all but 4.38 hours out of the year. Finally, we require applicants to use good engineering practice in determining the percentage of time a system can operate in compliance with the capacity and loading requirements. As suggested by FWCC, we will not dictate the use of a specific engineering model to determine availability but presume that use of Telecommunications Industry Association Bulletin TSB 10–F to determine availability is consistent with good engineering practice.

35. To the extent Verizon is concerned about the increased use of smaller antennas, we note that our rules already contain protections designed to minimize interference from smaller antennas. Section 101.115(b) of the Commission's rules establishes directional antenna standards designed to maximize the use of microwave spectrum while avoiding interference between operators. More specifically, the Commission's rules set forth certain requirements, specifications, and conditions pursuant to which FS stations may use antennas that comply with either the more stringent performance standard in Category A (also known as Standard A) or the less stringent performance standard in Category B (also known as Standard B). In general, the Commission's rules require a fixed microwave operator using a Category B antenna to upgrade if its antenna causes interference problems that would be resolved by the use of a Category A antenna. Thus, if adaptive modulation allows a licensee to use a Category B antenna, but that antenna would cause interference to (or receive interference from) another operation, the other operator can require the licensee to upgrade to a Category A antenna if the upgrade would resolve the interference issue. This rule applies even when the use of the Category B antenna precedes use by the other licensee.

36. Further, we decline to grant Verizon's request that we establish additional equipment-based restrictions on adaptive modulation—including requiring all licensees to operate at no less than two-thirds of the minimum payload capacity values established in § 101.141(a)(3). We believe that the time-based design standard for link availability, along with the other safeguards in the rule we adopt today, will adequately prevent the proliferation of inefficient systems and find that imposing additional requirements would limit licensee flexibility and place undue regulatory burdens on licensees. Finally, we reject Verizon's proposal to limit the transmit power and power spectral density when using non-compliant modulations to no more than 3 dB greater than the values of the worst-case (highest total signal power, highest power density) values of the available compliant modulations. An applicant can specify multiple emissions/modulation schemes, but they all must have the same EIRP unless they license separate paths. The gains realized from the use of adaptive modulation are related to the lower receiver threshold with lower order modulation schemes, not by using higher power with lower order modulation.

37. We will not require licensees to log instances when they use adaptive modulation or to include that information in station records. We are establishing the minimum availability standard as a path design requirement, not as an operational requirement. We believe that the best time to enforce the rule is before equipment is deployed, not after. Once an operator has made the investment required to deploy adequate equipment in a well-designed link, it should have every incentive to operate that equipment consistent with the design standard. It is possible, of course, that unusual weather conditions could require some operators to use adaptive modulation for longer intervals than our design standard specifies. However, we see no reason to penalize operators for events that are beyond their control. In that context, we believe that the burden imposed by requiring the logging of adaptive modulation episodes would outweigh any potential benefit of the information.

38. We conclude that allowing licensees to use adaptive modulation will confer substantial benefits on operators and their customers, while imposing minimal, if any, cost. Adaptive modulation will allow operators to maintain critical links during fade conditions, decreasing the number of microwave service outages they experience, and the detrimental impacts that these outages may cause for consumers. Furthermore, by reducing service outages, use of adaptive modulation may permit operators to avoid costs and delays associated with reinitializing service. The rules we adopt are designed to appropriately restrict use of adaptive modulation to provide fixed microwave operators additional flexibility to deal with adverse conditions while ensuring that their systems continue to be operated efficiently.

D. Auxiliary Stations

39. In the *NPRM,* the Commission sought comment on a proposal to permit greater reuse of scarce microwave resources by permitting FS licensees to coordinate and deploy multiple links—a primary link and ''auxiliary'' links. The idea had its origin in a petition filed by Wireless Strategies, Inc. (WSI) asking the Commission to issue a declaratory ruling ''confirming that a Fixed Service licensee is permitted to simultaneously coordinate multiple links whose transmitter elements collectively comply with the Commission's antenna standards and frequency coordination procedures.'' Although the Commission denied WSI's petition for declaratory ruling, determining that WSI's requested interpretation was inconsistent with its current rules, it found WSI's concept to be ''worthy of further consideration.''

40. Generally, the concept of auxiliary stations rests on the fact that a point-to-point microwave transmitter typically radiates energy outward in a keyhole-shaped signal pattern. This signal pattern precludes other stations from sharing the same spectrum in that area, if placement of the new transmitter would interfere with the original licensee's ability to receive its signal at its downlink station. The auxiliary stations proposal contemplates placement of multiple smaller transmitters within the signal pattern of the main link.

41. The Commission sought to clarify debate on the merits of the proposal by proposing specific rule changes intended to capture WSI's underlying concept, while preserving existing part 101 practices, policies and expectations to the greatest extent possible. Accordingly, the Commission sought comment on allowing FS licensees to deploy auxiliary stations under the following conditions, among others:

- Each auxiliary station would be required to operate on the same frequencies as the main licensed link.
- Auxiliary stations would not be allowed to cause any incremental interference to other primary links, *i.e.,* they would not be allowed to cause any more interference to other primary stations than the main link would cause.
- Auxiliary stations would be secondary in status and would have no right to claim protection from interference from any primary stations.
- Auxiliary stations would have to be coordinated in advance with other licensees and applicants pursuant to the frequency coordination process specified in § 101.103 of the Commission's rules.
- Auxiliary stations would not be subject to the loading, antenna standards or minimum path length requirements that apply to main links.

42. In seeking comments on those proposals, we asked commenters to provide (1) Estimates of how many systems they contemplated operating with auxiliary stations, (2) information on whether such systems would typically be deployed in urban or rural areas, (3) the types of uses to which such systems would be put, (4) the distances they contemplated between the auxiliary stations and their main links, and (5) the relative amounts of traffic that they expected to carry on main links versus the auxiliary links. We also asked commenters to discuss the possibility that services where geographic area licensing already exists—such as the Local Multipoint Distribution Service, the 24 GHz Service, or operations in the 38.6–40.0 GHz band (39 GHz band)—might provide a more reasonable way of accommodating any need for auxiliary stations.

43. Most commenters oppose the proposal to allow auxiliary stations. They argue that auxiliary stations will increase congestion, cause greater interference, and create opportunities for gaming/manipulation that would be detrimental to competition and efficient deployment of microwave facilities. Supporters contend that auxiliary stations could result in more efficient use of spectrum and could support a variety of innovative uses.

44. We decline to adopt at this time our proposal to allow use of auxiliary stations in FS bands. We lack a sufficient basis for concluding that auxiliary stations could coexist with FS stations without causing interference to primary FS stations. Moreover, we are concerned that adopting the auxiliary stations proposal would create a perverse incentive for applicants to propose excessive power for their primary transmitters, wasting spectrum in an effort to stake out as much territory as possible for auxiliary stations. Finally, using upper microwave bands such as LMDS, 24 GHz, and 39 GHz appears to be a viable alternative for the type of operations contemplated under the auxiliary station proposal.

45. Proponents of auxiliary stations largely operate on the premise that FS spectrum is ''wasted,'' particularly in urban areas. We disagree with this premise because there is already extensive reuse of FS spectrum. It is even possible to re-use a frequency at exactly the same location, under existing procedures.

46. As mentioned above, there is an insufficient record for us to conclude that auxiliary stations can coexist with existing microwave operations without causing interference. We reject, however, the argument that auxiliary stations should not be allowed solely because authorizing them would cause further congestion to spectrum that is already congested. If auxiliary stations could coexist with other microwave operations, we would view the ability to use spectrum more intensively as a positive development.

47. Most opponents of the auxiliary stations concept argue that it would be inefficient to intermix frequency division duplex (FDD) currently used in the microwave bands and time division duplex (TDD) operations, as WSI proposes. Comsearch points out that intermixing FDD and TDD increases the types of potential interference that may occur, including direct interference between sites, co-site interference, and reflective interference. In response, WSI relies on the ability of smart antennas to adapt an antenna pattern and use spectrum more efficiently. As noted by EIBASS, however, WSI has not provided any detailed information concerning the physically small, phased-array microwave antenna that it asserts would be suitable for auxiliary stations. Indeed, WSI has allegedly ignored requests from SBE and NSMA for credible proof of the performance that WSI ascribes to that antenna.

48. Furthermore, while WSI has repeatedly claimed that TDD-style auxiliary station operations would use spectrum more efficiently than existing FDD-style microwave operations, it has offered insufficient analysis of how auxiliary stations would co-exist with existing microwave operations. In the *NPRM,* the Commission had emphasized its intention to avoid interference to existing operations and ''maintaining the reliability and integrity of existing systems.'' Furthermore, the proposal to require prior coordination for auxiliary stations and to make auxiliary stations secondary to existing primary links does not adequately address the potential for interference but instead could result in situations where incumbent microwave licensees could face the costly and time-consuming process of identifying and resolving complex interference issues.

49. An additional consideration is that adopting the auxiliary stations proposal could create a perverse incentive for applicants to propose excessive power for their primary transmitters, creating a more diffuse antenna pattern, and thus precluding other microwave operators from coordinating spectrum or operating in that larger area. In the *NPRM,* the

Commission sought comment on that issue. EIBASS, San Mateo, and Verizon point to a prior coordination notice submitted by OEM as an example of how auxiliary stations could result in an inefficient use of spectrum and preclude frequency sharing. Furthermore, several licenses issued to WSI proposed the same very high EIRP level of 84.7 dBm. The proponents of auxiliary stations have not adequately explained these circumstances, or proposed any ways in which the Commission could prevent or counteract manipulation of the auxiliary stations mechanism in this manner. Thus, we remain concerned about the compatibility of auxiliary stations with existing operations.

50. Another reason we decline to authorize auxiliary stations in FS bands is that such operations can be accommodated in several upper microwave bands for which the Commission has issued geographic area licenses, including Local Multipoint Distribution Service (LMDS) 24 GHz, and 39 GHz, in which licensees may freely deploy links as they see fit.

51. While we do not authorize auxiliary stations in existing FS bands today, we encourage proponents of the auxiliary stations concept to continue working with other interested stakeholders to develop the concept. We note that proponents of the auxiliary stations concept believe that auxiliary stations would support such varied uses as the provision of backhaul, telecommunications support for small intelligent data centers, and rural telemedicine applications. We believe proponents of auxiliary stations should take advantage of the opportunities presented by 24 GHz, LMDS, and 39 GHz bands to develop and deploy auxiliary stations. To the extent parties believe further testing is needed to develop the auxiliary stations concept, we encourage those parties to cooperate in testing and development efforts, to develop a better factual record regarding the interaction of potential auxiliary station configurations with existing incumbent microwave systems, and with microwave applicants yet to come.

III. Memorandum Opinion and Order

52. In the *Memorandum Opinion and Order,* we address various other proposals offered in response to the *NOI* that we do not intend to consider further at this time, either because the proposals lack specificity, are outside the scope of this proceeding, were previously considered by the Commission, or are not ripe for consideration at this time.

A. Local Multipoint Distribution Service

53. TIA recommends that the Commission consider harmonizing its approach to the 27.5–28.35 GHz Local Multipoint Distribution Service (LMDS) band with recent proposals by the Radio Advisory Board of Canada (RABC). TIA says that Canada has designated that band for Local Multipoint Communications Systems (LMCS), a service similar to LMDS. In an effort to maximize use of the currently underutilized LMCS spectrum, the RABC has proposed to apply site-based licensing in the band, with technical rules that favor frequency division duplex operations on bandwidths ranging from 10 to 50 megahertz. TIA argues that harmonizing U.S. rules with Canada's would establish a broader market for equipment and services, thus improving the band's market potential through economies of scale. NSMA also supports this proposal.

54. We decline to take any action on this proposal at this time. No current LMDS licensee supports the proposal. Furthermore, most LMDS licensees have received an extension until June 1, 2012 to demonstrate buildout. While LMDS licensees can deploy point-to-point services, the majority of deployments that have been reported to the Commission at this time have involved point-to-multipoint services. We believe it would be premature to undertake the type of review contemplated by TIA and NSMA before current licensees have had an opportunity to build out their systems under the existing rules.

B. Wireless Communications Service

55. Sirius XM suggests that the Commission encourage use of the 2.3 GHz Wireless Communications Service (WCS) band for wireless backhaul operations because it would present substantially fewer interference concerns to adjacent licensees than the mobile operations. In 2010, the Commission adopted technical rules for the 2.3 GHz band that would allow WCS licensees to offer mobile broadband services while limiting the potential for harmful interference to incumbent services operating in adjacent bands such as Sirius XM. In response, Sirius XM and other parties filed petitions for reconsideration asking, among other things, that the Commission reconsider several technical rules that were adopted. Given that the issue of the appropriate technical rules for the 2.3 GHz band is currently pending in WT Docket No. 07–293, we decline to consider it in the instant proceeding.

C. Multichannel Video and Data Distribution Service

56. DTV Norwich, LLC (DTV Norwich), a licensee in the Multichannel Video Distribution and Data Service (MVDDS), asks the Commission to allow MVDDS licensees to utilize higher power to provide point-to-point services. MVDDS is a fixed wireless terrestrial service at 12.2–12.7 GHz that may be used to provide one-way digital fixed non-broadcast service, including one-way direct-to-home/office wireless service. MVDDS is authorized on a co-primary, non-harmful interference basis with incumbent Direct Broadcast Satellite Service (DBS) providers and on a co-primary basis with non-geostationary satellite orbit fixed-satellite service (NGSO FSS) stations. MVDDS is licensed on a geographic area basis according to Nielsen's 2002 Designated Market Areas and several FCC-defined areas.

57. DTV Norwich argues that MVDDS point-to-point operations at higher power levels may be possible without causing interference to DBS and NGSO FSS. According to DTV Norwich, however, ''at existing power levels, the point-to-point path 'hops' would simply be too short to be economically viable.''

58. DTV Norwich's proposal lacks sufficient specificity to be worthy of further consideration at this time. The Commission adopted rules for MVDDS based on the extensive record of the MVDDS rule-making proceeding, which included a congressionally mandated independent analysis of potential MVDDS interference to DBS. These rules include detailed frequency coordination procedures, interference protection criteria, and limitations on signal emissions, transmitter power levels, and transmitter locations. The rules limit the effective isotropic radiated power (EIRP) for MVDDS stations to 14.0 dBm per 24 megahertz (-16.0 dBW per 24 megahertz). To accommodate co-primary DBS earth stations, an MVDDS licensee shall not begin operation unless it can ensure that the equivalent power flux density (EPFD) from a proposed transmitting antenna does not exceed the applicable EPFD limit at any DBS subscriber location.

59. Under these circumstances, DTV Norwich's proposal is far too general to warrant further consideration. The Commission found that the power limits and other technical requirements would ensure that any interference caused to DBS customers will not exceed a level that is considered permissible. Furthermore, the Commission also contemplated that MVDDS service

providers might petition for waiver(s) of the technical rules, and required that the petitioning party must ''submit an independent technical demonstration of its equipment and technology.'' In denying petitions to reconsider the power limits, the Commission reiterated that MVDDS providers may seek waivers of the general MVDDS limits. DTV Norwich's proposal, if considered as a waiver request, would not meet that standard because it does not provide any technical analysis to support its claims. Indeed, DTV Norwich does not identify the power levels it wishes to use. For the reasons listed above, we decline to consider DTV Norwich's proposal.

D. Revising Technical Rules in Bands Above 15 GHz

60. Sprint recommends that the Commission develop more specific technical rules governing the use of spectrum masks above 15 GHz, which would allow for less variance in the interpretation of the Commission's rules by equipment vendors and enable more frequencies to be used while also reducing interference. Sprint also asks that the Commission establish maximum power limits based on the link distance for the bands above 15 GHz. No other commenter responded to this suggestion. We decline to take action at this time because (1) Sprint has not made a concrete showing that there is a problem requiring Commission intervention, and (2) Sprint does not offer specific proposals for changes to our rules. We reserve the right to consider the matter further if additional information is brought to our attention.

E. Modification of Existing Licensing Practices and Procedures

61. XO Communications (XO) expresses concern ''that substantial portions of spectrum are made available to the public in a manner that neither promotes * * * efficient spectrum use nor captures the value of this spectrum for the United States Treasury.'' XO contends that making ''these frequencies available to interested parties at virtually no cost on a first-come, first-served basis * * * undercut[s] the value of existing LMDS spectrum licenses.'' XO suggests that the Commission should consider changing its procedures for licensing point-to-point services to promote more efficient spectrum use by implementing a licensing regime under which mutually exclusive applications would be accepted and resolved through competitive bidding, or alternatively, applying spectrum usage fees, and by making changes to the Universal Licensing System (ULS) database. XO argues that adopting competitive bidding or spectrum fees would give licensees greater economic incentives to use their spectrum fully and efficiently. XO also states that the microwave link information provided in the ULS database for LMDS spectrum relative to the more extensive technical information provided for common carrier point-to-point microwave links may discourage customers from seeking to lease LMDS spectrum and that we should make changes to the ULS to place users of LMDS and common carrier microwave spectrum on an equal footing.

62. We are not persuaded that we should adopt XO's proposed changes to our licensing procedures for point-to-point services at this time. XO has provided no factual basis upon which to decide that the existing frequency coordination-based licensing regime, under which we accept applications for each microwave link or path, leads to inefficient use of this spectrum or is otherwise no longer in the public interest. While we recognize that accepting mutually exclusive applications that are resolved through competitive bidding is often an efficient way to assign licenses, we do not believe that the spectrum coordination regime for point-to-point services currently in effect, which does not result in the acceptance of mutually exclusive applications, has failed thus far either to promote efficient spectrum use or capture its value. We note, further, that the Commission may continue to use licensing schemes and other means to avoid mutual exclusivity if public interest goals are met. Moreover, we decline to implement XO's proposal to impose fees for the use of this spectrum. As the Commission has previously noted in other proceedings, we may lack the authority to impose certain user fees. Finally, to the extent that XO seeks to eliminate what it sees as an ''economic disparity'' between common carrier microwave spectrum and existing LMDS spectrum, we observe as an initial matter that there are significant differences between these spectrum bands. To the extent that XO's proposals regarding possible changes to the ULS are motivated by its desire to lease its LMDS spectrum for point-to-point uses, we are unaware of any obstacles that would prevent an LMDS licensee such as XO from making additional detailed technical information available to potential users seeking to lease spectrum for point-to-point use.

F. Siting Issues

1. OTARD

63. PCIA states that ''local regulations continue to be a significant barrier to the collocation of antennas on existing towers'' and recommends that the Commission examine its authority to streamline the collocation review process by restricting the ability of local authorities to review the placement of wireless antenna. We deny PCIA's request. In 2000, the Commission determined that section 332(c)(7) of the Communications Act provides state and local governments with the authority to regulate the placement, construction, and modification of carrier hub sites and relay antennas. PCIA is asking the Commission to modify this decision. PCIA, however, has not presented any change of circumstances, legal precedent, or statutory authority to support this change, so we see no reason to revisit the Commission's decision in the *2000 OTARD Report and Order.*

2. Colocation of Microwave Facilities

64. XO states that some carriers violate section 251(c)(6) of the Communications Act by hindering XO's efforts to expand its collocation facilities at incumbent LEC central offices to include microwave transmission equipment. XO contends that ''the Commission should expressly confirm that the collocation of microwave transmission facilities as proposed by XO was one of the arrangements contemplated by section 251(c)(6) of the [Communication] Act.'' We find that the limited information provided by XO on this issue does not provide us with a sufficient basis upon which to act at this time. This decision does not preclude XO from filing a more complete submission as it deems appropriate.

G. Universal Service

65. FiberTower suggests that the Commission utilize the Universal Service Fund to make wireless backhaul available to qualifying areas and for qualifying purposes. In February of 2011, the Commission proposed to revise the Universal Service Fund. In that item, the Commission asked whether it should modify the universal service rules to provide additional support for middle mile costs and what effect would middle mile support have on incentives for small carriers to develop regional networks that provide lower cost, higher capacity backhaul capability. Given that the issue of providing Universal Service funding for wireless backhaul service is currently pending in the Universal Service

proceeding, we decline to address this issue in this proceeding but are incorporating FiberTower's comments into the record of WC Docket No. 10–90.

H. Upper Microwave Substantial Service

66. NSMA argues that in determining whether 24 GHz, 39 GHz, and LMDS licensees have offered substantial service, the Commission fails to positively consider ''basic and important steps that lead to successful band utilization * * *'' It gives the following examples of such activity: (1) Spending significant resources producing Requests for Proposals (RFPs) to develop equipment in its band; (2) utilizing the Secondary Markets rules to offer spectrum leases throughout the license area; (3) submitting proposals to carrier, government or enterprise customers that rely upon utilizing the wide-area license; and/or (4) building several links, but has not yet met the safe harbor criterion (typically four links per million of population). NSMA asks the Commission to ''track and credit'' such activities.

67. We see no need to modify our substantial service rules and policies. NSMA's arguments ignore one of the Commission's overriding purposes of buildout requirements: Providing ''a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public.'' The Wireless Telecommunications Bureau has correctly rejected substantial service showings based on preparatory activities of the type described by NSMA where there is no actual service being provided to the public. We emphasize, however, that safe harbors are merely one means of demonstrating substantial service, and given an appropriate showing, a level of service that does not meet a safe harbor may still constitute substantial service. Furthermore, we will evaluate all substantial service showings that do not meet an established safe harbor on a case-by-case basis.

I. Other Pending Matters

68. We recognize that there are other pending matters and proceedings relating to wireless backhaul that are not addressed in this item. Those matters and proceedings include: (1) A petition for rulemaking asking that the 7125–8500 MHz band be allocated for non-Federal use and allotted for FS use, (2) a petition for rulemaking asking that conditional authority be authorized throughout the 23 GHz band and change the mechanism for coordinating operation with the National Telecommunications Information Administration (NTIA), and (3) a request made in this proceeding to revise the Commission's policy of allowing a satellite earth station to coordinate for the full 360-degree azimuth range of the earth station even when it is communicating with only one satellite in a limited segment of the band. We will address these issues separately or in future orders in this proceeding.

IV. Procedural Matters

69. *Paperwork Reduction Analysis:* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. While we did not seek comment on the information collection requirements in the *NPRM,* we are seeking comments now. The information collection will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

70. *Final Regulatory Flexibility Analysis of the Report and Order:* Because we amend the rules in this *Report and Order,* we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the Regulatory Flexibility Act (RFA). Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in the *Report and Order* on small entities.

A. Need for, and Objectives of, the Proposed Rules

In this *Report and Order,* we adopt three changes to our rules involving microwave stations. First, we allow fixed service (FS) stations to operate in the 6875–7125 MHz and 12700–13150 MHz bands. Second, we eliminate the prohibition on broadcasters using part 101 stations as the final radiofrequency (RF) link in the chain of distribution of program material to broadcast stations. Third, we amend our minimum payload capacity rule to facilitate the use of adaptive modulation to allow licensees to maintain communications by briefly reducing the rate at which they send data.

With respect to the first action, we anticipate that demand for fixed service spectrum will increase substantially as it is increasingly used for wireless backhaul and other important purposes. The 6875–7125 MHz and 12700–13150 MHz bands are currently assigned to television pickup, television studio-transmitter links, television relay stations, television translator relay stations, and mobile-only CARS. Assigning this spectrum to the fixed service will provide additional spectrum that will be used for wireless backhaul and other critical applications, while protecting other existing services in these bands.

Second, § 101.603(a)(7) of the Commission's rules, commonly known as the ''final link'' rule, prohibits broadcasters from using part 101 stations as the final radiofrequency (RF) link in the chain of distribution of program material to broadcast stations. The rule ensures that private operational fixed stations are used for private, internal purposes and prevents broadcasters from causing congestion when part 74 Broadcast Auxiliary Service (BAS) frequencies are available. In light of the increasing use of digital technologies, we conclude that the ''final link'' rule may no longer serve its intended purpose and may in fact inhibit the full use of part 101 spectrum. As broadcasters and other microwave users move to digital-based systems, we conclude it does not make sense to distinguish between program material and other types of content transmitted using digital technologies. Furthermore, the rule may impose additional costs by requiring broadcasters to build two different systems: one system to carry program material to the transmitter site and a separate system to handle other data. In light of the extensive sharing between BAS and FS of the same bands, we believe it is appropriate to provide broadcasters with additional flexibility to use the FS bands. We therefore eliminate this rule.

Third, we amend our part 101 technical rules to facilitate the use of adaptive modulation, which is a process that reduces the data rate of a microwave link in order to maintain communications. Section 101.141(a)(3) of the Commission's rules establishes minimum payload capacities (in terms of megabits per second) for various channel sizes in certain part 101 bands. The underlying purpose of the rule is to promote efficient frequency use. Although the Commission has never quantified the time period over which licensees must comply with those

standards, the industry has generally construed the payload requirements as applying whenever the link is in service. Fixed service links, especially long links, are subject to atmospheric fading: a temporary drop in received power caused by changes in propagation conditions. Fading leads to an increase in errors and sometimes to a complete loss of communications. One way to combat fading is by briefly reducing the data rate, which requires a temporary change in the type of modulation, a process called ''adaptive modulation.'' The use of adaptive modulation may reduce the minimum payload capacity below the value specified in the rule for a short time, although this still represents an increase over the otherwise zero level during the fade. Adaptive modulation has public interest benefits of allowing communications to be maintained during adverse propagation conditions. Given the critical backhaul and public safety applications of fixed service stations, we find this benefit to be significant. By allowing this level of flexibility in our efficiency standards, we hope to provide carriers with a way to lower their costs yet still use the spectrum efficiently. This rule change will allow licensees to take advantage of the benefits of adaptive modulation while ensuring efficient use of the spectrum.

B. Legal Basis

The action is authorized pursuant to sections 1, 2, 4(i), 7, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

Wireless Telecommunications Carriers (except satellite). The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 31,549 common carrier fixed licensees and 89,633 private and public safety operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

Radio Broadcasting. The subject rules and policies potentially will apply to all AM and FM radio broadcasting licensees and potential licensees. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. The SBA has established a small business size standard for this category, which is: firms having $7 million or less in annual receipts. According to BIA/Kelsey, MEDIA Access Pro Database on January 13, 2011, 10,820 (97%) of 11,127 commercial radio stations have revenue of $7 million or less. Therefore, the majority of such entities are small entities. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any ultimate changes to the rules and forms.

Television stations. The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts. Business concerns included in this industry are those ''primarily

engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,390. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

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

This *Report and Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

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

As noted above, this *Report and Order* (1) allows fixed service stations to operate in the 6875–7125 and 12700–13150 MHz bands, (2) eliminates the prohibition on broadcasters using part 101 stations as the final radiofrequency (RF) link in the chain of distribution of the program material to broadcast stations, (3) and amends our minimum payload capacity rule to facilitate the use of adaptive modulation to allow licensees to maintain communications by briefly reducing the rate at which they send data. These actions would provide additional options to all licensees, including small entity licensees. Such actions will serve the public interest by making additional spectrum available for fixed service users, providing additional flexibility for broadcasters to use microwave spectrum, and allowing communications to be maintained during adverse propagation conditions. The rules could therefore open up beneficial economic opportunities to a variety of spectrum users, including small businesses.

Generally, the alternative approach would be to maintain the existing rules. If the rules were not changed, the 6875–7125 MHz and 12700–13150 MHz bands would remain unavailable for fixed service use. Given the increasing demand for part 101 spectrum for backhaul and other uses, not making that spectrum available would make it increasingly difficult to meet the demand for microwave facilities. If the prohibition on broadcasters using part 101 stations as the final radiofrequency (RF) link in the chain of distribution of the program material to broadcast stations is not eliminated, broadcasters will be limited to using Broadcast Auxiliary Service spectrum for that purpose, and may have to build two separate microwave systems using different frequencies. Such an alternative would be inadequate to meet the demands of licensees and is therefore less than ideal. If no BAS spectrum is available, broadcasters will have to pay to prepare a request for waiver to access part 101 spectrum and await action on that waiver request before they can begin operation. Such expense and delay may be particularly harmful to small businesses.

With respect to our proposal to amend our minimum capacity payload rule to facilitate adaptive modulation, if our rules are not amended to facilitate the use of adaptive modulation, licensees will be unable to fully use technology to maintain critical communications during signal fades. An alternative to the adaptive modulation proposal made in the *NPRM* would be to allow compliance with the efficiency standards ''on average'' and ''during normal operation.'' We believe that standard would give licensees too much latitude to deploy inefficient systems that would be inconsistent with good engineering practices.

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

None.

V. Ordering Clauses

71. Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 7, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, that this *Report and Order* is hereby adopted.

72. It is further ordered that the rules adopted herein will become effective 30 days after the date of publication in the **Federal Register**, except for § 74.605, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

73. It is further ordered that the Comments of FiberTower Corporation filed on October 25, 2010 shall be inserted into the record of WC Docket No. 10–90.

74. It is further ordered that the Commission shall send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

75. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order and Memorandum Opinion and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 74 and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

Bulah P. Wheeler,

Deputy Manager.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission hereby amends 47 CFR parts 74 and 101 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 336(f), 336(h) and 554.

■ 2. Amend § 74.602 by revising paragraph (a) introductory text to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (g) of this section. The band segment 6425–6525 MHz is available for broadcast auxiliary stations as described in paragraph (i) of this section. The bands 6875–7125 MHz and 12700–13200 MHz are co-equally shared with stations licensed pursuant to Parts 78 and 101 of the Commission's Rules. Broadcast network-entities may also use the 1990–2110, 6425–6525 and 6875–7125 MHz bands for mobile television pickup only.

* * * * *

■ 3. § 74.605 is added to read as follows:

§ 74.605 Registration of stationary television pickup receive sites.

Licensees of TV pickup stations in the 6875–7125 MHz and 12700–13200 MHz bands shall register their stationary receive sites using the Commission's Universal Licensing System.

PART 101—FIXED MICROWAVE SERVICES

■ 4. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 5. Amend § 101.31 by revising paragraph (b)(1) introductory text to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) An applicant for a new point-to-point microwave radio station(s) or a modification of an existing station(s) in the 952.95–956.15, 956.55–959.75, 3,700–4,200; 5,925–6,425; 6,525–6,875; 6,875–7,125; 10,550–10,680; 10,700–11,700; 11,700–12,200; 12,700–13,150; 13,200–13,250; 17,700–19,700; and 21,800–22,000 MHz, and 23,000–23,200 MHz bands (see § 101.147(s) for specific service usage) may operate the proposed station(s) during the pendency of its applications(s) upon the filing of a properly completed formal application(s) that complies with subpart B of part 101 if the applicant certifies that the following conditions are satisfied:

* * * * *

■ 6. Amend § 101.101 by adding the entry ''6875–7125'' to the table to read as follows:

§ 101.101 Frequency availability.

Frequency Band (MHz)	Radio Service				
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast Auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78, & 100)	Notes
*	*	*	*	*	*
6875–7125	CC	OFS	TV BAS	CARS.	
*	*	*	*	*	*

* * * * *

■ 7. Amend § 101.103 by revising paragraph (d)(2)(ii) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(d) * * *

(2) * * *

(ii) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Applicant's name and address.

Transmitting station name.

Transmitting station coordinates.

Frequencies and polarizations to be added, changed or deleted.

Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation(s) (loading). Notification shall indicate if modulations lower than the values listed in the table to § 101.141(a)(3) of the Commission's rules will be used.

Transmitting antenna type(s), model, gain and, if required, a radiation pattern provided or certified by the manufacturer.

Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.

Receiving station name.

Receiving station coordinates.

Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

Path azimuth and distance.

Estimated transmitter transmission line loss expressed in dB.

Estimated receiver transmission line loss expressed in dB.

For a system utilizing ATPC, maximum transmit power, coordinated transmit power, and nominal transmit power.

Note: The position location of antenna sites shall be determined to an accuracy of no less than ±1 second in the horizontal dimensions (latitude and longitude) and ±1 meter in the vertical dimension (ground elevation) with respect to the National Spatial Reference System.

* * * * *

■ 8. Amend § 101.107(a), in the table by adding the entry ''6,875 to 7,125[1]'' to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

Frequency (MHz)	Frequency Tolerance (percent)
* * * *	
6,875 to 7,125 [1]	0.005
* * * *	

* * * * *

■ 9. Amend § 101.109(c), in the table by adding the entries ''6,875 to 7,125'' and ''12,700–13,150'' to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * *	*
6,875 to 7,125	25 MHz [1]
12,700 to 13,150	50 MHz
* * *	*

* * * * *

■ 10. Amend § 101.113(a), in the table by adding the entry ''6,875–7,125'' to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP [1, 2]	
	Fixed[1,2] (dBW)	Mobile (dBW)
* * *		*
6,875–7,125	+55	
* * *		*

* * * * *

■ 11. Amend § 101.115(b), in the table by adding the entry ''6,875–7,125'' to read as follows:

§ 101.115 Directional antennas.

* * * * *

(b) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*	*	*	*		*		*		
6,875 to 7,125	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	21	25	29	32	35	39	45
*	*	*	*	*		*		*		

* * * * *

■ 12. Amend § 101.141 by revising paragraph (a)(3) introductory text and by adding the following entries ''25.0 89.4 [3]50 2 DS–3/STS–1'' in the table as follows:

§ 101.141 Microwave modulation.

(a) * * *

(3) The following capacity and loading requirements must be met for equipment applied for, authorized, and placed in service after June 1, 1997 in 3700–4200 MHz (4 GHz), 5925–6425, 6525–6875 MHz (6 GHz), 6875–7125 MHz (7 GHz), 10,550–10,680 MHz (10 GHz), 10,700–11700 MHz (11 GHz), and 12,700–13,150 MHz (13 GHz) bands, except during anomalous signal fading. During anomalous signal fading, licensees may adjust to a modulation specified in their authorization if such modulation is necessary to allow licensees to maintain communications, even if the modulation will not comply with the capacity and loading requirements specified in this paragraph. Links that use equipment capable of adjusting modulation must be designed using generally accepted multipath fading and rain fading models to meet the specified capacity and loading requirements at least 99.95% of the time, in the aggregate of both directions in a two-way link.

* * * * *

Nominal channel bandwidth (MHz)	Minimum Payload capacity (MBits/s) [1]	Minimum traffic payload (as percent of payload capacity)	Typical utilization [2]
* * *	*	*	*
25.0	89.4	[3]50	2 DS – 3/STS–1.
* * *	*	*	*

* * * * *

■ 13. Amend § 101.147 as follows:
■ a. Add the entry ''6,875–7,125 MHz'' to the table in paragraph (a);
■ b. Revise the entry ''12,700–13,200 MHz'' in the table in paragraph (a);
■ c. Add note (34) to paragraph (a);
■ d. Redesignate paragraph (l) as paragraph (k);
■ e. Add a new paragraph (l);
■ f. Revise paragraph (p).

The revisions and additions read as follows:

§ 101.147 Frequency assignments.

* * * * *

(a) * * *

* * * * *

6,875–7,125 MHz (10), (34)

* * * * *

12,700–13,200 (22), (34)

* * * * *

(34) In the bands 6,875–7,125 MHz and 12,700–13,150 MHz, links shall not intersect with the service areas of television pickup stations.

* * * * *

(l) *6875 to 7125 MHz.* 25 MHz authorized bandwidth.

(1) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6877.5	7027.5
6882.5	7032.5
6887.5	7037.5
6892.5	7042.5
6897.5	7047.5
6902.5	7052.5
6907.5	7057.5
6912.5	7062.5
6917.5	7067.5
6922.5	7072.5
6927.5	7077.5
6932.5	7082.5
6937.5	7087.5
6942.5	7092.5
6947.5	7097.5
6952.5	7102.5
6957.5	7107.5
6962.5	7112.5
6967.5	7117.5
6972.5	7122.5

(2) 8.33 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6879.165	7029.165
6887.495	7037.495
6895.825	7045.825
6904.155	7054.155
6912.485	7062.485
6920.815	7070.815
6929.145	7079.145
6937.475	7087.475
6945.805	7095.805
6954.135	7104.135
6962.465	7112.465
6970.795	7120.795

(3) 12.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6881.25	7031.25
6893.75	7043.75
6906.25	7056.25
6918.75	7068.75
6931.25	7081.25
6943.75	7093.75
6956.25	7106.25
6968.75	7118.75

(4) 25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6887.5	7037.5
6912.5	7062.5
6937.5	7087.5
6962.5	7112.5

* * * * *

(p)*12,200 to 13,150 MHz. (1)* 12,000–12,700 MHz. The Commission has allocated the 12.2–12.7 GHz band for use by the Direct Broadcast Satellite Service (DBS), the Multichannel Video Distribution and Data Service (MVDDS), and the Non-Geostationary Satellite Orbit Fixed Satellite Service (NGSO FSS). MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS use can be on a common carrier and/or non-common carrier basis and can use channels of any desired bandwidth up to the maximum of 500 MHz provided the EIRP does not exceed 14 dBm per 24 megahertz. Private operational fixed point-to-point microwave stations authorized after September 9, 1983, are licensed on a non-harmful interference basis to DBS and are required to make any and all adjustments necessary to prevent harmful interference to operating domestic DBS receivers. Incumbent public safety licensees shall be afforded protection from MVDDS and NGSO FSS licensees, however all other private operational fixed licensees shall be secondary to DBS, MVDDS and NGSO FSS licensees. As of May 23, 2002, the Commission no longer accepts applications for new licenses for point-to-point private operational fixed stations in this band, however, incumbent licensees and previously filed applicants may file applications for minor modifications and amendments (as defined in § 1.929 of this chapter) thereto, renewals, transfer of control, or assignment of license. Notwithstanding any other provisions, no private operational fixed point-to-point microwave stations are permitted to cause harmful interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the Broadcasting-Satellite Service established at the 1983 WARC.

(2) *12,700 to 13,150 MHz.* 50 MHz authorized bandwidth.

(i) 5 MHz channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12702.5	12927.5
12707.5	12932.5
12712.5	12937.5
12717.5	12942.5
12722.5	12947.5
12727.5	12952.5
12732.5	12957.5
12737.5	12962.5
12742.5	12967.5
12747.5	12972.5
12752.5	12977.5
12757.5	12982.5
12762.5	12987.5
12767.5	12992.5
12772.5	12997.5
12777.5	13002.5
12782.5	13007.5
12787.5	13012.5
12792.5	13017.5
12797.5	13022.5
12802.5	13027.5
12807.5	13032.5
12812.5	13037.5
12817.5	13042.5
12822.5	13047.5
12827.5	13052.5
12832.5	13057.5
12837.5	13062.5
12842.5	13067.5
12847.5	13072.5
12852.5	13077.5
12857.5	13082.5
12862.5	13087.5
12867.5	13092.5
12872.5	13097.5
12877.5	13102.5
12882.5	13107.5
12887.5	13112.5
12892.5	13117.5
12897.5	13122.5
12902.5	13127.5
12907.5	13132.5
12912.5	13137.5
12917.5	13142.5
12922.5	13147.5

(ii) 8.33 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12704.165	12929.165
12712.495	12937.495

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12720.825	12945.825
12729.155	12954.155
12737.485	12962.485
12745.815	12970.815
12754.145	12979.145
12762.475	12987.475
12770.805	12995.805
12779.135	13004.135
12787.465	13012.465
12795.795	13020.795
12804.125	13029.125
12812.455	13037.455
12820.785	13045.785
12829.115	13054.115
12837.445	13062.445
12845.775	13070.775
12854.105	13079.105
12862.435	13087.435
12870.765	13095.765
12879.095	13104.095
12887.425	13112.425
12895.755	13120.755
12904.085	13129.085
12912.415	13137.415

(iii) 12.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12706.25	12931.25
12718.75	12943.75
12731.25	12956.25
12743.75	12968.75
12756.25	12981.25
12768.75	12993.75
12781.25	13006.25
12793.75	13018.75
12806.25	13031.25
12818.75	13043.75
12831.25	13056.25
12843.75	13068.75
12856.25	13081.25
12868.75	13093.75
12881.25	13106.25
12893.75	13118.75
12906.25	13131.25
12918.75	13143.75

(iv) 25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12712.5	12937.5
12737.5	12962.5
12762.5	12987.5
12787.5	13012.5
12812.5	13037.5
12837.5	13062.5
12862.5	13087.5
12887.5	13112.5
12912.5	13137.5

(v) 50 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12725	12925
12775	12975
12825	13025
12875	13075

* * * * *

■ 11. Amend § 101.603 by revising paragraph (a)(7) to read as follows:

§ 101.603 Permissible communications.

(a) * * *

(7) Licensees may transmit program material from one location to another;

* * * * *

[FR Doc. 2011–23001 Filed 9–26–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2010–0161]

RIN 2105–AE13

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Federal Drug Testing Custody and Control Form; Technical Amendment

AGENCY: Office of the Secretary, DOT.

ACTION: Final Rule; Technical Amendment.

SUMMARY: On September 27, 2010, the U.S. Department of Transportation (DOT) published an interim final rule (IFR) authorizing the use of a new Federal Drug Testing Custody and Control Form (CCF) in its drug testing program. Use of the form is authorized beginning October 1, 2010. This final rule responds to comments to the IFR and will finalize the authorization and procedures for using the new CCF for DOT-required drug tests. The intended effect of this final rule is to finalize the authority for use of the new CCF and to make a technical amendment to its drug testing procedures by amending a provision of the rule which was inadvertently omitted from a final rule in August 2010. The September 27, 2010 final rule was published under RIN 2105–AE03, however, it was inadvertently shown as a completed action on the Fall 2010 Agenda; this action replaces RIN 2105–AE03.

DATES: The rule is effective September 27, 2011.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

All urine specimens collected under the DOT drug testing regulation, 49 CFR Part 40, must be collected using chain-of-custody procedures that incorporate the use of the CCF promulgated by the Department of Health and Human Services (HHS). On November 17, 2009, HHS published a proposal to revise the CCF [74 FR 59196]. In their proposal, HHS stated that the CCF is used for the Federal workplace drug testing program, but also pointed out that DOT ''* * *requires its regulated industries to use the Federal CCF'' [74 FR 59196]. Because many of the commentors to the HHS proposal were transportation industry employers, Consortia/Third-party Administrators (C/TPAs), and associations, the Department was confident the commentors understood the new CCF would be used in the DOT-regulated program. All the comments submitted were thoroughly reviewed by HHS and taken into consideration in fashioning the new CCF. The Department worked closely with HHS on the new CCF. HHS announced the new CCF in the **Federal Register** [75 FR 41488]. The CCF became effective date of October 1, 2010.

However, because of the short time frame between the HHS publication of the new CCF and its October 1, 2010 effective date, the Department did not have an opportunity to propose a rulemaking and therefore issued an Interim Final Rule (IFR) on September 27, 2010 [75 FR 59105] authorizing DOT-regulated employers to also begin using the new CCF on October 1, 2010. The Department sought comments only on the actual implementation of the new CCF, and not on the form itself because HHS already sought and received comments on the form and its use because many of the commentors to the HHS proposal were transportation industry employers, C/TPAs, and associations. In the IFR, the Department made minor procedural amendments to the regulation to merely reflect the changes HHS made to the revised CCF, and clarified how collectors, laboratories, and medical review officers (MROs) must use the new form in the DOT regulated context. There were 15 comments from four commentors.

The Department is also making a technical amendment to address an omission in the rule text of a final rule published on August 16, 2010 [75 FR

49850]. Specifically, we had removed the requirement in § 40.121(d) for the MRO to complete continuing education units to satisfy the requalification training requirement but we failed to amend the definition of ''Continuing education'' in § 40.3 to reflect this change. We do so in this Final Rule.

Section-by-Section Discussion

The following part of the preamble discusses comments to each of the amended rule text sections.

Section 40.14 What collection information must employers provide to collectors?

The Department added a new § 40.14 to put into one section the information employers or their C/TPAs have been routinely providing collectors or should have been providing collectors; information such as, the reason for the test, whether the test is to be conducted under direct observation, the MRO name and address, and employee information (*e.g.,* name and SSN or ID number), etc. All of this information would need to be provided in Step 1 of the CCF. Since a new Step 1–D was added to the CCF to specify which DOT Agency regulates the employee's safety-sensitive function, we included this among the information the employer or its C/TPA must provide to the collector.

One commentor, a large laboratory with many collection sites, concurred with the requirement for employers or C/TPAs to ensure the collector has the necessary information to complete Step 1. The commentor went on to say that it relied on the employer or C/TPA to pre-mark the demographic information (*e.g.,* test reason, testing authority) in Step 1 since its collection sites don't keep employer-specific CCFs at their sites and the employee may not know this information. When the employer pre-marks this information, this helps ensure the information is completed correctly. The Department agrees. In the event Step 1 is not pre-marked, the employer would need to ensure the information is provided to the collector.

Two commentors, apparently from the same collection site, were concerned that requiring the employer to provide the DOT Agency information would be confusing for the employers and that not knowing this information would delay the testing process. They stated ''* * * there are many instances when the employer has no idea if their donor is DOT or non-DOT'' and ''When inquiring of employers' DER to supply this information the majority of the responses are 'I don't know!' The Department also received several telephonic requests for clarification since October 1 in which collectors questioned how they would know this information if the employer didn't know it themselves.

The Department believes the collector should never be put in a situation to determine the DOT Agency that regulates an employee's safety-sensitive functions. This is the employer's responsibility. Furthermore, the Department was surprised to hear that any employer currently regulated by DOT would not know which DOT Agency regulates it. We can only surmise this is a rare occurrence and there is no reason to believe it is a systemic problem. Perhaps it was because the employer forgot the specific abbreviation of its respective regulator: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Pipeline and Hazardous Materials Safety Administration (PHMSA); and the United States Coast Guard (USCG).[1] Nevertheless, not knowing this fundamental concept raised serious concerns and compliance questions. For example: Is the employer subject to the DOT's drug and alcohol testing regulations? If the employer is covered by the DOT regulations, then other questions arise. Is the employer testing its employees at the proper random testing rates? Is the employer conducting post-accident tests when required? Is the employer providing the correct educational material to its employees as required by the DOT regulations? Is the employer appropriately filling-out and submitting Management Information System (MIS) reports?

In response to the comment that employers do not know which DOT Agency regulates them or their employees' safety-sensitive functions, we encourage employers and their C/TPAs to review the guidance documents available to them on our site *http://www.dot.gov/odapc* and affirm their regulating DOT Agency. The Department is also providing the following to assist employers and C/TPAs with understanding these critical elements:

Federal Motor Carrier Safety Administration (FMCSA)

Covered employee: A person who *operates (i.e., drives)* a Commercial Motor Vehicle (CMV) with a gross vehicle weight rating (gvwr) of 26,001 or more pounds; or is designed to transport 16 or more occupants (to include the driver); or is of any size and is used in the transport of hazardous materials that require the vehicle to be placarded.

Federal Railroad Administration (FRA)

Covered employee: A person who performs *hours of service* functions at a rate sufficient to be placed into the railroad's random testing program. Categories of personnel who normally perform these functions are *locomotive engineers, trainmen, conductors, switchmen, locomotive hostlers/helpers, utility employees, signalmen, operators,* and *train dispatchers.*

Federal Aviation Administration (FAA)

Covered employee: A person who performs *flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatch duties, aircraft maintenance or preventive maintenance duties; ground security coordinator duties; aviation screening duties; and air traffic control duties.* **Note:** Anyone who performs the above duties directly or by contract for a part 119 certificate holder authorized to operate under parts 121 and/or 135, *air tour operators* defined in 14 CFR part 91.147, and *air traffic control* facilities not operated by the Government are considered covered employees.

Federal Transit Administration (FTA)

Covered employee: A person who performs a *revenue vehicle operation; revenue vehicle and equipment maintenance; revenue vehicle control or dispatch (optional); Commercial Drivers License non-revenue vehicle operation;* or *armed security duties.*

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Covered employee: A person who performs on a pipeline or liquefied natural gas (LNG) facility an *operation, maintenance, or emergency-response* function.

United States Coast Guard (USCG)

Covered employee: A person who is *on board a vessel* acting under the authority of a *license, certificate of registry,* or *merchant mariner's document.* Also, a person *engaged* or *employed on board a U.S. owned vessel* and such vessel is required to engage, employ or be operated by a person holding a license, certificate of registry, or merchant mariner's document.

Employers and their C/TPAs that may have DOT Agency-specific questions can find the DOT Agency drug and alcohol program manager contact

[1] For purposes of following the requirements of 49 CFR Part 40, ''*DOT, The Department, DOT Agency*'' is defined, at 40.3, to include the United States Coast Guard.

information at *http://www.dot.gov/odapc/oamanagers.html.*

Section 40.23 What actions do employers take after receiving verified test results?

In paragraph (f)(4) of this section, we added the DOT Agency to the items an employer must instruct the collector to note on the CCF. There were no comments to this section.

Section 40.45 What form is used to document a DOT urine collection?

In paragraph (b) of this section, we changed the date after which an expired CCF is not to be used and in paragraph (c)(3) of this section, we permitted employers to preprint the box of the DOT Agency under whose authority the test will occur. There were two comments to this section. One commentor thanked the Department for authorizing the use of the old CCF until September 30, 2011, stating the year-long transition to the new CCF would provide employers and their service agents ample time to deplete their stock of old CCFs. The other commentor pointed out that the old CCF expires November 30, 2011, and suggested that the inadvertent use of the old CCF be permitted until this date. The Department agrees with the commentor about extending the use of the old CCF until November 30, 2011 so that it coincides with the form's actual expiration date. We have amended the rule text to reflect this change, so that the use of an old CCF would be a flaw that would require correction after November 30, 2011.

Section 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

In paragraph (e) of this section we revised the rule text to provide the collector with specific instructions on completing Step 2 of the CCF. One commentor concurred with this change. The same commentor asked for clarification that a collector's failure to note the DOT Agency in Step 1–D was not a flaw that would require the collector to contact the DER to obtain the missing information. See our response to § 40.209.

Section 40.83 How do laboratories process incoming specimens?

In paragraph (a) of this section we made a nomenclature change from ''laboratory copy'' to ''Copy 1''. One commentor agreed with this change. The commentor wondered if DOT wanted laboratories to document the DOT Agency information from the CCF into their systems. We neither proposed that, nor will we require that.

Section 40.97 What do laboratories report and how do they report it?

We revised paragraphs (a)(2)(i) and (ii), and (e)(1) of this section to require the laboratory to include the numerical values for the drug(s) or drug metabolite(s) in their report to the MRO. One commentor agreed with this change. The commentor wondered if DOT wanted laboratories to report the DOT Agency information from the CCF to the MRO. We neither proposed that, nor will we require that.

Section 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?

In paragraph (c) of this section we revised the rule text with specific instructions to the MRO on completing Step 6 of Copy 2 of the CCF. There were no comments to this section.

Section 40.163 How does the MRO report drug test results?

In paragraph (c)(10) of this section we required the MRO to indicate the DOT Agency on their written report to the employer if the DOT Agency is noted on the CCF. There were two comments to this change. One commentor asked for clarification on what action a MRO is to take if the DOT Agency is not noted on the CCF. The other commentor disagreed with the MRO including the DOT Agency on the result report to the employer for the following reasons: (1) The absence of the DOT Agency being marked on the CCF is not a flaw requiring corrective action, (2) some service agents may view the absence of the DOT Agency information as an item that requires corrective action by the collector, (3) there is no current requirement for the service provider's information system to capture this data element, (4) some service agents may view this change as a requirement for the laboratory to include the DOT Agency information on their electronic reports to the MRO, and (5) the DOT Agency information would be on the employer's copy of the CCF.

Regarding the comment asking for clarification on what action a MRO is to take if the DOT Agency is not noted on the CCF, the MRO is not to delay the medical review process and report the verified result to the employer. As we said in the IFR, ''* * *the laboratory and MRO should note that the testing authority box was not checked and continue with processing, testing, verifying, and reporting the specimen result, as appropriate''. [75 FR 59106] Regarding the comment to not including the DOT Agency on the result report to the employer, we agree that the designation adds nothing to the employer's knowledge of the test outcome. We have removed the requirement from the rule text.

Section 40.187 What does the MRO do with split specimen laboratory results?

In paragraph (f) of this section, we revised the rule text on how a MRO is to document split specimen test results. There were no comments to this section.

Section 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

In paragraph (d)(2) of this section we revised the rule text on how a MRO is to document a ''Refusal to Test''. There were no comments this section.

Section 40.193 What happens when an employee does not provide a sufficient amount of urine for a drug test?

In paragraph (d)(2)(i) of this section we revised the rule text on how a MRO is to complete Step 6 on Copy 2 of the CCF when recording a ''Refusal to Test''. There were no comments to this section.

Section 40.203 What problems cause a drug test to be cancelled unless they are corrected?

In paragraph (d)(2) of this section we made a nomenclature change from ''laboratory copy'' to ''Copy 1''. In paragraph (d)(3) we revised the time period during which the use of an expired form would not cause the test to be canceled. One commentor did ''* * *not believe that use of an expired CCF should result in a cancelled test—especially in a post-accident testing situation.'' The commentor suggests, as they did in an earlier comment, that use of the old CCF be permitted until its expiration date of November 30, 2011 and that use after that date be considered a ''correctable flaw''. See our response to § 40.45.

Section 40.209 What procedural problems do not result in the cancellation of a test and do not require corrective action?

We revised paragraph (b)(1) of this section to say that omitting the DOT Agency in Step 1–D of the CCF would be an administrative mistake that would not result in the cancellation of a test and would not require corrective action. One commentor, a large laboratory, agreed that omitting the DOT Agency in Step 1–D of the CCF should be a mistake that would not require corrective action. Another commentor, a national

association, asked for clarification on what documentation a collector, laboratory, MRO or other person administering the drug testing process must maintain when the DOT Agency was not identified on the CCF.

Another commentor, a large third party administrator, wanted to bring a discrepancy to our attention. Specifically, the commentor noticed a discrepancy between the title of this section in the IFR ''What procedural problems do not result in the cancellation of a test and do not require corrective action?'' and the title of this section in the 2001 final rule [66 FR 41954] ''What procedural problems do not result in the cancellation of a test and do not require correction?''

Regarding the comment asking for clarification on documenting the omission of the DOT Agency in Step 1–D, we believe the plain language of the rule text is self explanatory. Nevertheless, we will point out that laboratories and MROs should document this omission as they have been documenting similar omissions (the transposition of an employee's social security number or employer ID number) in the past. As we stated in the IFR, ''* * *the laboratory and MRO should note that the testing authority box was not checked and continue with processing, testing, verifying, and reporting the specimen result, as appropriate''. Furthermore, there is no requirement for the collector to provide a 'memorandum for record' to anyone after the fact to indicate the DOT Agency. The regulation requires the employer to provide this information to the collector and the information is to be recorded on the CCF. As a reminder to MROs and employers, it is important for you to know the regulating DOT Agency since there may be DOT Agency specific requirements you must fulfill (*e.g.,* reporting medical qualifications or non-negative results to a DOT Agency). Not complying with a DOT Agency's regulatory requirement because the DOT Agency want not indicated on the CCF does not mitigate your regulatory responsibilities.

The Department would also like to remind employers, C/TPAs and collectors that although omitting the DOT Agency on the CCF would not cancel the test or require corrective action, this type of error may subject them to enforcement action under DOT Agency regulations or action under the Public Interest Exclusion if it becomes a recurring issue.

Regarding the comment about the typographical discrepancy, the commentor is correct. However, we will leave the title of this section as printed in the IFR, because we believe it reads better and reflects the intent expressed in the 2001 preamble. [66 FR 41948]

Section 40.355 What limitations apply to the activities of service agents?

In paragraph (l) of this section we made a nomenclature change from ''laboratory copy'' to ''Copy 1''. One commentor asked for guidance on whether transmitting only Copy 1 to the laboratory is still applicable since collectors are being instructed by the laboratory to fax the MRO copy to a fax server at the lab.

In this section, the Department only changed the nomenclature from ''laboratory copy'' to ''Copy 1''. The requirement for collectors to send Copy 1 to the laboratory did not change.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This final rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. The rule finalizes the authorization and procedures for using the new CCF for DOT-required drug tests and makes a technical amendment to correct an inadvertent oversight in a previous rulemaking. This rule does not increase costs on regulated parties because it authorizes regulated employers to continue using the old CCF for an additional fourteen months, until November 30, 2011. After this date, the revised CCF must be used. This allows employers to use their current supply of old CCFs rather than discarding them. The rule does not impose new burdens on any parties. While small entities are among those who may use the revised CCF, the Department certifies, under the Regulatory Flexibility Act, that this rule does not have a significant economic impact on a substantial number of small entities.

The Department finds good cause to make this rule final immediately upon publication. The basis of this determination is that, under the present interim final rule, drug tests recorded on the old version of the CCF would have to be cancelled beginning October 1, 2011. Laboratories and other program participants commented that because of the large numbers of old forms still being used, this date would result in large numbers of cancellations of otherwise valid tests. By making this rule change effective before October 1, the Department will prevent this unfortunate result and allow program participants to further exhaust stocks of the old version of the form for another four months. This will make program administration considerably smoother.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued September 22, 2011, at Washington DC.

Ray LaHood,

Secretary of Transportation.

Accordingly, the Interim Final Rule amending 49 CFR part 40 which was published at 75 CFR 59105 on September 27, 2010, is adopted as final with the following changes:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. In § 40.3 revise the definition of ''Continuing education'' to read as follows:

§ 40.3 What do the terms used in this part mean?

* * * * *

Continuing education. Training for substance abuse professionals (SAPs) who have completed qualification training and are performing SAP functions, designed to keep SAPs current on changes and developments in the DOT drug and alcohol testing program.

* * * * *

■ 3. In § 40.45, revise paragraph (b) to read as follows:

§ 40.45 What form is used to document a DOT urine collection?

* * * * *

(b) You must not use a non-Federal form or an expired CCF to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF (e.g., that after November 30, 2011, they must not use an expired CCF for DOT urine collections).

* * * * *

■ 4. In § 40.163:

■ a. Paragraph (c)(8) is amended by removing the semi-colon at the end and adding ''; and'' in its place.

■ b. Paragraph (c)(9) is amended by removing ''; and'' and adding a period in its place.

■ c. Remove paragraph (c)(10).

■ 5. In § 40.203, paragraph (d)(3) is revised, to read as follows:

§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?

* * * * *

(d) * * *

(3) The collector uses a non-Federal form or an expired CCF for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures of this part in an HHS-certified laboratory. During the period of October 1, 2010–November 30, 2011, you are not required to cancel a test because of the use of an old CCF. Beginning December 1, 2011, if the problem is not corrected, you must cancel the test.

* * * * *

[FR Doc. 2011–24818 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2011–0127]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

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

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2010, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 27, 2011.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5308.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notices of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order 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 affects 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 the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements. Instead it provides a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. Accordingly, the agency believes that the preparation of a regulatory evaluation is not warranted for this rule.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. Sec. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The

following is our statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

Executive Order 13132 requires NHTSA 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.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' 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, NHTSA 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 NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

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 more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

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

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was published in September, 2010.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 572 to 599, which is due for revision on October 1, 2011, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying

entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically, first by make and then by model.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1989–1991'' means ''1989 through 1991'').

(d) The initials ''MC'' used in the Make column mean ''Motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean

''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214; (d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401; (e) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401; (f) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401; (g) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 138, 201, 202a, 206, 208, 213, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216; (e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225; (f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (g) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (h) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Acura	Legend		1988	51		
Acura	Legend		1989	77		
Acura	Legend		1990–1992	305		
AL-Spaw	EMA Mobile Stage Trailer		2009			42
Alfa Romeo	164		1989	196		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Alfa Romeo	164		1991	76		
Alfa Romeo	164		1994	156		
Alfa Romeo	Spider		1987	70		
Alfa Romeo	Spyder		1992	503		
Alpina	B12 5.0	Sedan	1988–1994			41
Alpina	B12 2-door	Coupe	1989–1996			43
Aston Martin	Vanquish		2002–2004	430		
Aston Martin	Vantage		2006–2007	530		
Audi	80		1988–1989	223		
Audi	100		1989	93		
Audi	100		1993	244		
Audi	100		1990–1992	317		
Audi	A4		1996–2000	352		
Audi	A4, RS4, S4	8D	2000–2001	400		
Audi	A6		1998–1999	332		
Audi	A8		2000	424		
Audi	A8		1997–2000	337		
Audi	A8 Avant Quattro		1996	238		
Audi	RS6 & RS6 Avant		2003	443		
Audi	S6		1996	428		
Audi	S8		2000	424		
Audi	TT		2000–2001	364		
Bentley	Arnage (manufactured 1/1/01–12/31/01).		2001	473		
Bentley	Azure (LHD & RHD)		1998	485		
Bimota (MC)	DB4		2000	397		
Bimota (MC)	SB8		1999–2000	397		
Bimota (MC)	SB6		1994–1999	523		
BMW	3 Series		1998	462		
BMW	3 Series		1999	379		
BMW	3 Series		2000	356		
BMW	3 Series		2001	379		
BMW	3 Series		1995–1997	248		
BMW	3 Series		2003–2004	487		
BMW	318i, 318iA		1987–1989		23	
BMW	320i		1990–1991	283		
BMW	325e, 325eA		1987		24	
BMW	325i		1991	96		
BMW	325i		1992–1996	197		
BMW	325i, 325iA		1987–1989		30	
BMW	325iS, 325iSA		1987–1989		31	
BMW	325iX		1990	205		
BMW	325iX, 325iXA		1988–1989		33	
BMW	5 Series		2000	345		
BMW	5 Series		1990–1995	194		
BMW	5 Series		1995–1997	249		
BMW	5 Series		1998–1999	314		
BMW	5 Series		2000–2002	414		
BMW	5 Series		2003–2004	450		
BMW	520iA		1989	9		
BMW	525i		1989	5		
BMW	528e, 528eA		1987–1988		21	
BMW	535i, 535iA		1987–1989		25	
BMW	635CSi, 635CSiA		1987–1989		27	
BMW	7 Series		1992	232		
BMW	7 Series		1990–1991	299		
BMW	7 Series		1993–1994	299		
BMW	7 Series		1995–1999	313		
BMW	7 Series		1999–2001	366		
BMW	730iA		1988	6		
BMW	735i, 735iA		1987–1989		28	
BMW	8 Series		1991–1995	361		
BMW	850 Series		1997	396		
BMW	850i		1990	10		
BMW	All other passenger car models except those in the M1 and Z1 series.		1987–1989		78	
BMW	L7		1987		29	
BMW	M3		1988–1989		35	
BMW	M3 (manufactured prior to 9/1/06).		2006	520		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
BMW	M5		1988		34	
BMW	M6		1987–1988		32	
BMW	X5 (manufactured 1/1/03–12/31/04).		2003–2004	459		
BMW	Z3		1996–1998	260		
BMW	Z3 (European market)		1999	483		
BMW	Z8		2002	406		
BMW	Z8		2000–2001	350		
BMW (MC)	C1		2000–2003			40
BMW (MC)	K1		1990–1993	228		
BMW (MC)	K100		1987–1992	285		
BMW (MC)	K1100, K1200		1993–1998	303		
BMW (MC)	K75		1996			36
BMW (MC)	K75S		1987–1995	229		
BMW (MC)	R1100		1994–1997	231		
BMW (MC)	R1100		1998–2001	368		
BMW (MC)	R1100RS		1994	177		
BMW (MC)	R1150GS		2000	453		
BMW (MC)	R1200C		1998–2001	359		
BMW (MC)	R80, R100		1987–1995	295		
Buell (MC)	All Models		1995–2002	399		
Cadillac	DeVille		1994–1999	300		
Cadillac	DeVille (manufactured 8/1/99–12/31/00).		2000	448		
Cadillac	Seville		1991	375		
Cagiva (MC)	Gran Canyon 900		1999	444		
Carrocerias	Cimarron trailer		2006–2007			37
Chevrolet	400SS		1995	150		
Chevrolet	Astro Van		1997	298		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997	349		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001	461		
Chevrolet	Camaro		1999	435		
Chevrolet	Cavalier		1997	369		
Chevrolet	Corvette		1992	365		
Chevrolet	Corvette	Coupe	1999	419		
Chevrolet	Suburban		1989–1991	242		
Chevrolet	Tahoe		2000	504		
Chevrolet	Tahoe		2001	501		
Chevrolet	Trailblazer (manufactured prior to 9/1/07) originally sold in the Kuwaiti market.		2007	514		
Chrysler	Daytona		1992	344		
Chrysler	Grand Voyager		1998	373		
Chrysler	LHS (Mexican market)		1996	276		
Chrysler	Shadow (Middle Eastern market).		1989	216		
Chrysler	Town and Country		1993	273		
Citroen	XM		1990–1992			1
Dodge	Durango (manufactured for the Mexican market).		2007	534		
Dodge	Ram 1500 Laramie Crew Cab		2009	535		
Dodge	Ram		1994–1995	135		
Ducati (MC)	748		1999–2003	421		
Ducati (MC)	851		1988	498		
Ducati (MC)	888		1993	500		
Ducati (MC)	900		2001	452		
Ducati (MC)	916		1999–2003	421		
Ducati (MC)	600SS		1992–1996	241		
Ducati (MC)	748 Biposto		1996–1997	220		
Ducati (MC)	900SS		1991–1996	201		
Ducati (MC)	996 Biposto		1999–2001	475		
Ducati (MC)	996R		2001–2002	398		
Ducati (MC)	MH900E		2001–2002	524		
Ducati (MC)	Monster 600		2001	407		
Ducati (MC)	ST4S		1999–2005	474		
Eagle	Vision		1994	323		
Ferrari	360		2001	376		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Ferrari	456		1995	256		
Ferrari	550		2001	377		
Ferrari	575		2002–2003	415		
Ferrari	575		2004–2005	507		
Ferrari	208, 208 Turbo	all models	1987–1988		76	
Ferrari	328	all models	1987–1989		37	
Ferrari	328 GTS		1987		37	
Ferrari	348 TB		1992	86		
Ferrari	348 TS		1992	161		
Ferrari	360 (manufactured after 9/31/02).		2002	433		
Ferrari	360 (manufactured before 9/1/02).		2002	402		
Ferrari	360 Modena		1999–2000	327		
Ferrari	360 Series		2004	446		
Ferrari	360	Spider & Coupe	2003	410		
Ferrari	456 GT & GTA		1999	445		
Ferrari	456 GT & GTA		1997–1998	408		
Ferrari	512 TR		1993	173		
Ferrari	550 Marinello		1997–1999	292		
Ferrari	599 (manufactured prior to 9/1/06).		2006	518		
Ferrari	Enzo		2003–2004	436		
Ferrari	F355		1995	259		
Ferrari	F355		1999	391		
Ferrari	F355		1996–1998	355		
Ferrari	F430 (manufactured prior to 9/1/06).		2005–2006	479		
Ferrari	F50		1995	226		
Ferrari	Mondial (all models)		1987–1989		74	
Ferrari	Testarossa		1989		39	
Ferrari	Testarossa		1987–1988		39	
Ford	Bronco (manufactured in Venezuela).		1995–1996	265		
Ford	Escort (Nicaraguan market)		1996	322		
Ford	Escort RS Cosworth		1994–1995			9
Ford	Explorer (manufactured in Venezuela).		1991–1998	268		
Ford	F150		2000	425		
Ford	Mustang		1993	367		
Ford	Mustang		1997	471		
Ford	Windstar		1995–1998	250		
Freightliner	FLD12064ST		1991–1996	179		
Freightliner	FTLD112064SD		1991–1996	178		
GMC	Suburban		1992–1994	134		
Harley Davidson (MC)	FX, FL, XL Series		1998	253		
Harley Davidson (MC)	FX, FL, XL Series		1999	281		
Harley Davidson (MC)	FX, FL, XL Series		2000	321		
Harley Davidson (MC)	FX, FL, XL Series		2001	362		
Harley Davidson (MC)	FX, FL, XL Series		2002	372		
Harley Davidson (MC)	FX, FL, XL Series		2003	393		
Harley Davidson (MC)	FX, FL, XL Series		2004	422		
Harley Davidson (MC)	FX, FL, XL Series		2005	472		
Harley Davidson (MC)	FX, FL, XL Series		2006	491		
Harley Davidson (MC)	FX, FL, XL Series		1987–1997	202		
Harley Davidson (MC)	FL Series		2010	528		
Harley Davidson (MC)	FX, FL, XL & VR Series		2007	506		
Harley Davidson (MC)	FXSTC Soft Tail Custom		2007	499		
Harley Davidson (MC)	FX, FL, XL & VR Series		2008	517		
Harley Davidson (MC)	FX, FL, XL & VR Series		2009	522		
Harley Davidson (MC)	VRSCA		2002	374		
Harley Davidson (MC)	VRSCA		2003	394		
Harley Davidson (MC)	VRSCA		2004	422		
Hatty	45 ft double axle trailer		1999–2000			38
Heku	750 KG boat trailer		2005			33
Hobby	Exclusive 650 KMFE trailer		2002–2003			29
Honda	Accord		1991	280		
Honda	Accord		1992–1999	319		
Honda	Accord (RHD)	Sedan & Wagon	1994–1997	451		
Honda	Civic DX	Hatchback	1989	128		
Honda	CR–V		2002	447		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Honda	CR–V		2005	489		
Honda	Prelude		1989	191		
Honda	Prelude		1994–1997	309		
Honda (MC)	CB 750 (CB750F2T)		1996	440		
Honda (MC)	CB1000F		1988	106		
Honda (MC)	CBR250		1989–1994			22
Honda (MC)	CMX250C		1987	348		
Honda (MC)	RVF 400		1994–2000	358		
Honda (MC)	VF750		1994–1998	290		
Honda (MC)	VFR 400		1994–2000	358		
Honda (MC)	VFR 400, RVF 400		1989–1993			24
Honda (MC)	VFR750		1990	34		
Honda (MC)	VFR750		1991–1997	315		
Honda (MC)	VFR800		1998–1999	315		
Honda (MC)	VT600		1991–1998	294		
Hyundai	Elantra		1992–1995	269		
Hyundai	XG350		2004	494		
Jaguar	Sovereign		1993	78		
Jaguar	S-Type		2000–2002	411		
Jaguar	XJ6		1987	47		
Jaguar	XJ6 Sovereign		1988	215		
Jaguar	XJS		1991	175		
Jaguar	XJS		1992	129		
Jaguar	XJS		1987		40	
Jaguar	XJS		1994–1996	195		
Jaguar	XJS, XJ6		1988–1990	336		
Jaguar	XK–8		1998	330		
Jeep	Cherokee		1993	254		
Jeep	Cherokee (European market)		1991	211		
Jeep	Cherokee (LHD & RHD)		1994	493		
Jeep	Cherokee (LHD & RHD)		1995	180		
Jeep	Cherokee (LHD & RHD)		1996	493		
Jeep	Cherokee (LHD)		1997–1998	516		
Jeep	Cherokee (RHD)		1997–2001	515		
Jeep	Cherokee (Venezuelan market).		1992	164		
Jeep	Grand Cherokee		1994	404		
Jeep	Grand Cherokee		1997	431		
Jeep	Grand Cherokee		2001	382		
Jeep	Grand Cherokee (LHD—Japanese market).		1997	389		
Jeep	Liberty		2002	466		
Jeep	Liberty		2005	505		
Jeep	Liberty (Mexican market)		2004	457		
Jeep	Wrangler		1993	217		
Jeep	Wrangler		1995	255		
Jeep	Wrangler		1998	341		
Kawasaki (MC)	EL250		1992–1994	233		
Kawasaki (MC)	Ninja ZX–6R		2002			44
Kawasaki (MC)	VN1500–P1/P2 series		2003	492		
Kawasaki (MC)	ZX1000–B1		1988	182		
Kawasaki (MC)	ZX400		1987–1997	222		
Kawasaki (MC)	ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999	312		
Kawasaki (MC)	ZX600		1987–1998	288		
Kawasaki (MC)	ZZR1100		1993–1998	247		
Ken-Mex	T800		1990–1996	187		
Kenworth	T800		1992	115		
Komet	Standard, Classic & Eurolite trailer.		2000–2005	477		
KTM (MC)	Duke II		1995–2000	363		
Lamborghini	Diablo (except 1997 Coupe)		1996–1997	416		
Lamborghini	Diablo	Coupe	1997			26
Lamborghini	Gallardo (manufactured 1/1/04–12/31/04).		2004	458		
Lamborghini	Gallardo (manufactured 1/1/06–8/31/06).		2006	508		
Lamborghini	Murcielago	Roadster	2005	476		
Land Rover	Defender 110		1993	212		
Land Rover	Defender 90	VIN & Body Limited	1994–1995	512		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Land Rover	Defender 90 (manufactured before 9/1/97) and VIN "SALDV224*VA" or "SALDV324*VA".		1997	432		
Land Rover	Discovery		1994–1998	338		
Land Rover	Discovery (II)		2000	437		
Land Rover	Range Rover		2004	509		
Lexus	GS300		1998	460		
Lexus	GS300		1993–1996	293		
Lexus	RX300		1998–1999	307		
Lexus	SC300		1991–1996	225		
Lexus	SC400		1991–1996	225		
Lincoln	Mark VII		1992	144		
M&V	GmbH Siegmar Fzb trailer		2008–2010			46
Magni (MC)	Australia, Sfida		1996–1999	264		
Mazda	MPV		2000	413		
Mazda	MX–5 Miata		1990–1993	184		
Mazda	RX–7		1987–1995	279		
Mazda	Xedos 9		1995–2000	351		
Mercedes Benz	190 D	201.126	1987–1989		54	
Mercedes Benz	190 D (2.2)	201.122	1987–1989		54	
Mercedes Benz	190 E	201.028	1990	22		
Mercedes Benz	190 E	201.036	1990	104		
Mercedes Benz	190 E	201.024	1991	45		
Mercedes Benz	190 E	201.028	1992	71		
Mercedes Benz	190 E	201.018	1992	126		
Mercedes Benz	190 E		1993	454		
Mercedes Benz	190 E	201.028	1987–1989		54	
Mercedes Benz	190 E (2.3)	201.024	1987–1989		54	
Mercedes Benz	190 E (2.6)	201.029	1987–1989		54	
Mercedes Benz	190 E (2.6) 16	201.034	1987–1989		54	
Mercedes Benz	200 E	124.021	1989	11		
Mercedes Benz	200 E	124.012	1991	109		
Mercedes Benz	200 E	124.019	1993	75		
Mercedes Benz	200 TE	124.081	1989	3		
Mercedes Benz	220 E		1993	168		
Mercedes Benz	220 TE	Station Wagon	1993–1996	167		
Mercedes Benz	230 CE	124.043	1991	84		
Mercedes Benz	230 CE	123.043	1992	203		
Mercedes Benz	230 E	124.023	1988	1		
Mercedes Benz	230 E	124.023	1989	20		
Mercedes Benz	230 E	124.023	1990	19		
Mercedes Benz	230 E	124.023	1991	74		
Mercedes Benz	230 E	124.023	1993	127		
Mercedes Benz	230 E	124.023	1987		55	
Mercedes Benz	230 TE	124.083	1989	2		
Mercedes Benz	250 D		1992	172		
Mercedes Benz	250 E		1990–1993	245		
Mercedes Benz	260 E	124.026	1992	105		
Mercedes Benz	260 E	124.026	1987–1989		55	
Mercedes Benz	260 SE	126.020	1989	28		
Mercedes Benz	280 E		1993	166		
Mercedes Benz	280 SE	116.024	1987–1988		51	
Mercedes Benz	300 CE	124.051	1990	64		
Mercedes Benz	300 CE	124.051	1991	83		
Mercedes Benz	300 CE	124.050	1992	117		
Mercedes Benz	300 CE	124.061	1993	94		
Mercedes Benz	300 CE	124.050	1988–1989		55	
Mercedes Benz	300 D Turbo	124.193	1987–1989		55	
Mercedes Benz	300 DT	124.133	1987–1989		55	
Mercedes Benz	300 E	124.031	1992	114		
Mercedes Benz	300 E	124.030	1987–1989		55	
Mercedes Benz	300 E 4-Matic		1990–1993	192		
Mercedes Benz	300 SD	126.120	1987–1989		53	
Mercedes Benz	300 SE	126.024	1990	68		
Mercedes Benz	300 SE	126.024	1987		53	
Mercedes Benz	300 SE	126.024	1988–1989		53	
Mercedes Benz	300 SEL	126.025	1987		53	
Mercedes Benz	300 SEL	126.025	1990	21		
Mercedes Benz	300 SEL	126.025	1988–1989		53	
Mercedes Benz	300 SL	107.041	1989	7		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	300 SL	129.006	1992	54		
Mercedes Benz	300 SL	107.041	1987–1988		44	
Mercedes Benz	300 TE	124.090	1990	40		
Mercedes Benz	300 TE		1992	193		
Mercedes Benz	300 TE	124.090	1987–1989		55	
Mercedes Benz	320 CE		1993	310		
Mercedes Benz	320 SL		1992–1993	142		
Mercedes Benz	350 CLS		2004			45
Mercedes Benz	380 SE	126.043	1987–1989		53	
Mercedes Benz	380 SE	126.032	1987–1989		53	
Mercedes Benz	380 SEL	126.033	1987–1989		53	
Mercedes Benz	380 SL	107.045	1987–1989		44	
Mercedes Benz	380 SLC	107.025	1987–1989		44	
Mercedes Benz	400 SE		1992–1994	296		
Mercedes Benz	420 E		1993	169		
Mercedes Benz	420 SE	126.034	1987–1989		53	
Mercedes Benz	420 SE		1990–1991	230		
Mercedes Benz	420 SEC		1990	209		
Mercedes Benz	420 SEL	126.035	1990	48		
Mercedes Benz	420 SEL	126.035	1987–1989		53	
Mercedes Benz	450 SEL	116.033	1987–1988		51	
Mercedes Benz	450 SEL (6.9)	116.036	1987–1988		51	
Mercedes Benz	450 SL	107.044	1987–1989		44	
Mercedes Benz	450 SLC	107.024	1987–1989		44	
Mercedes Benz	500 E	124.036	1991	56		
Mercedes Benz	500 SE	126.036	1988	35		
Mercedes Benz	500 SE		1990	154		
Mercedes Benz	500 SE	140.050	1991	26		
Mercedes Benz	500 SEC	126.044	1990	66		
Mercedes Benz	500 SEC	126.044	1987–1989		53	
Mercedes Benz	500 SEL		1990	153		
Mercedes Benz	500 SEL	126.037	1991	63		
Mercedes Benz	500 SEL	126.037	1987–1989		53	
Mercedes Benz	500 SL	129.066	1989	23		
Mercedes Benz	500 SL	126.066	1991	33		
Mercedes Benz	500 SL	129.006	1992	60		
Mercedes Benz	500 SL	107.046	1987–1989		44	
Mercedes Benz	560 SEC	126.045	1990	141		
Mercedes Benz	560 SEC		1991	333		
Mercedes Benz	560 SEC	126.045	1987–1989		53	
Mercedes Benz	560 SEL	126.039	1990	89		
Mercedes Benz	560 SEL	140	1991	469		
Mercedes Benz	560 SEL	126.039	1987–1989		53	
Mercedes Benz	560 SL	107.048	1987–1989		44	
Mercedes Benz	600 SEC	Coupe	1993	185		
Mercedes Benz	600 SEL	140.057	1993–1998	271		
Mercedes Benz	600 SL	129.076	1992	121		
Mercedes Benz	All other passenger car models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance".		1987–1989		77	
Mercedes Benz	C 320	203	2001–2002	441		
Mercedes Benz	C Class		1994–1999	331		
Mercedes Benz	C Class	203	2000–2001	456		
Mercedes Benz	C Class	221	2003–2006	521		
Mercedes Benz	CL 500		1998	277		
Mercedes Benz	CL 500		1999–2001	370		
Mercedes Benz	CL 600		1999–2001	370		
Mercedes Benz	CLK 320		1998	357		
Mercedes Benz	CLK Class		1999–2001	380		
Mercedes Benz	CLK-Class	209	2002–2005	478		
Mercedes Benz	CLS Class (manufactured prior to 9/1/06).		2006	532		
Mercedes Benz	E 200		1994	207		
Mercedes Benz	E 200		1995–1998	278		
Mercedes Benz	E 220		1994–1996	168		
Mercedes Benz	E 250		1994–1995	245		
Mercedes Benz	E 280		1994–1996	166		
Mercedes Benz	E 320		1994–1998	240		
Mercedes Benz	E 320	211	2002–2003	418		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	E 320	Station Wagon	1994–1999	318		
Mercedes Benz	E 420		1994–1996	169		
Mercedes Benz	E 500		1994	163		
Mercedes Benz	E 500		1995–1997	304		
Mercedes Benz	E Class	W210	1996–2002	401		
Mercedes Benz	E Class	211	2003–2004	429		
Mercedes Benz	E Series		1991–1995	354		
Mercedes Benz	G-Wagon	463	1996			11
Mercedes Benz	G-Wagon	463	1997			15
Mercedes Benz	G-Wagon	463	1998			16
Mercedes Benz	G-Wagon	463	1999–2000			18
Mercedes Benz	G-Wagon 300	463.228	1993			3
Mercedes Benz	G-Wagon 300	463.228	1994			5
Mercedes Benz	G-Wagon 300	463.228	1990–1992			5
Mercedes Benz	G-Wagon 320 LWB	463	1995			6
Mercedes Benz	G-Wagon 5 DR LWB	463	2001			21
Mercedes Benz	G-Wagon 5 DR LWB	463	2002	392		
Mercedes Benz	G-Wagon 5 DR LWB		2006–2007	527		
Mercedes Benz	G-Wagon LWB V–8	463	1992–1996			13
Mercedes Benz	G-Wagon SWB	463	2005			31
Mercedes Benz	G-Wagon SWB	463	1990–1996			14
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR.	463	2004			28
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR.	463	2001–2003			25
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR (manufactured before 9/1/06).	463	2006			35
Mercedes Benz	Maybach		2004	486		
Mercedes Benz	S 280	140.028	1994	85		
Mercedes Benz	S 320		1994–1998	236		
Mercedes Benz	S 420		1994–1997	267		
Mercedes Benz	S 500		1994–1997	235		
Mercedes Benz	S 500		2000–2001	371		
Mercedes Benz	S 600		1995–1999	297		
Mercedes Benz	S 600		2000–2001	371		
Mercedes Benz	S 600	Coupe	1994	185		
Mercedes Benz	S 600L		1994	214		
Mercedes Benz	S Class		1993	395		
Mercedes Benz	S Class	140	1991–1994	423		
Mercedes Benz	S Class		1995–1998	342		
Mercedes Benz	S Class		1998–1999	325		
Mercedes Benz	S Class	W220	1999–2002	387		
Mercedes Benz	S Class	220	2002–2004	442		
Mercedes Benz	S Class (manufactured before 9/1/06).		2005–2006	525		
Mercedes Benz	SE Class		1992–1994	343		
Mercedes Benz	SEL Class	140	1992–1994	343		
Mercedes Benz	SL Class		1993–1996	329		
Mercedes Benz	SL Class	W129	1997–2000	386		
Mercedes Benz	SL Class	R230	2001–2002			19
Mercedes Benz	SL-Class (European market)	230	2003–2005	470		
Mercedes Benz	SLK		1997–1998	257		
Mercedes Benz	SLK		2000–2001	381		
Mercedes Benz	SLK Class (manufactured between. 8/31/04 and 8/31/06)	171	2005–2006	511		
Mercedes Benz (truck)	Sprinter		2001–2005	468		
Mini	Cooper (European market)	Convertible	2005	482		
Mitsubishi	Galant Super Salon		1989	13		
Mitsubishi	Galant VX		1988	8		
Moto Guzzi (MC)	California		2000–2001	495		
Moto Guzzi (MC)	California EV		2002	403		
Moto Guzzi (MC)	Daytona		1993	118		
Moto Guzzi (MC)	Daytona RS		1996–1999	264		
MV Agusta (MC)	F4		2000	420		
Nissan	240SX		1988	162		
Nissan	GTS & GTR(RHD) a.k.a. "Skyline" manufactured 1/96–6/98.	R33	1996–1998			32
Nissan	Maxima		1989	138		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Nissan	Pathfinder		2002	412		
Nissan	Pathfinder		1987–1995	316		
Nissan	Stanza		1987	139		
Peugeot	405		1989	65		
Plymouth	Voyager		1996	353		
Pontiac	Firebird Trans Am		1995	481		
Pontiac (MPV)	Trans Sport		1993	189		
Porsche	911 Series		1991	526		
Porsche	911		1997–2000	346		
Porsche	928		1991–1996	266		
Porsche	928		1993–1998	272		
Porsche	911 Carrera	996	2002–2004	439		
Porsche	911 (996) GT3		2004	438		
Porsche	911 C4		1990	29		
Porsche	911 Cabriolet		1987–1989		56	
Porsche	911 Carrera		1993	165		
Porsche	911 Carrera		1994	103		
Porsche	911 Carrera		1987–1989		56	
Porsche	911 Carrera		1995–1996	165		
Porsche	911 Carrera (manufactured prior to 9/1/06).	997 Coupe	2005–2006	997		
Porsche	911 Carrera 2 & Carrera 4		1992	52		
Porsche	911 Carrera Cabriolet (manufactured prior to 9/1/06).	Cabriolet	2005–2006	513		
Porsche	911	Coupe	1987–1989		56	
Porsche	911 Targa		1987–1989		56	
Porsche	911 Turbo		1992	125		
Porsche	911 Turbo		2001	347		
Porsche	911 Turbo		1987–1989		56	
Porsche	924	Coupe	1987–1989		59	
Porsche	924 S		1987–1989		59	
Porsche	924 Turbo	Coupe	1987–1989		59	
Porsche	928	Coupe	1987–1989		60	
Porsche	928 GT		1987–1989		60	
Porsche	928 S	Coupe	1987–1989		60	
Porsche	928 S4		1990	210		
Porsche	928 S4		1987–1989		60	
Porsche	944	Coupe	1987–1989		61	
Porsche	944 S	Cabriolet	1990	97		
Porsche	944 S	Coupe	1987–1989		61	
Porsche	944 S2 (2-door Hatchback)		1990	152		
Porsche	944 Turbo	Coupe	1987–1989		61	
Porsche	946 Turbo		1994	116		
Porsche	All other passenger car models except Model 959.		1987–1989		79	
Porsche	Boxster		1997–2001	390		
Porsche	Boxster (manufactured before 9/1/02).		2002	390		
Porsche	Carrera GT		2004–2005	463		
Porsche	Cayenne		2003–2004	464		
Porsche	Cayenne (manufactured prior to 9/1/06).		2006	519		
Porsche	GT2		2001			20
Porsche	GT2		2002	388		
Rice	Beaufort Double trailer		1991	529		
Rolls Royce	Bentley		1987–1989	340		
Rolls Royce	Bentley Brooklands		1993	186		
Rolls Royce	Bentley Continental R		1990–1993	258		
Rolls Royce	Bentley Turbo R		1995	243		
Rolls Royce	Bentley Turbo R		1992–1993	291		
Rolls Royce	Phantom		2004	455		
Saab	9.3		2003	426		
Saab	9000		1988	59		
Saab	9000		1994	334		
Saab	900 S		1987–1989	270		
Saab	900 SE		1995	213		
Saab	900 SE		1990–1994	219		
Saab	900 SE		1996–1997	219		
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure).	Coupe & Cabriolet	2005			30
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure).	Coupe & Cabriolet	2002–2004			27

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.	Coupe & Cabriolet	2006			34
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.	Coupe & Cabriolet	2007			39
Subaru	Forester		2006–2007	510		
Suzuki (MC)	GSF 750		1996–1998	287		
Suzuki (MC)	GSX1300R a.k.a. "Hayabusa"		1999–2006	484		
Suzuki (MC)	GSX1300R a.k.a. "Hayabusa"		2007–2011	533		
Suzuki (MC)	GSX–R 1100		1987–1997	227		
Suzuki (MC)	GSX–R 750		1987–1998	275		
Suzuki (MC)	GSX–R 750		1999–2003	417		
Toyota	4-Runner		1998	449		
Toyota	Avalon		1995–1998	308		
Toyota	Camry		1989	39		
Toyota	Camry		1987–1988		63	
Toyota	Celica		1987–1988		64	
Toyota	Corolla		1987–1988		65	
Toyota	Land Cruiser		1989	101		
Toyota	Land Cruiser		1987–1988	252		
Toyota	Land Cruiser		1990–1996	218		
Toyota	MR2		1990–1991	324		
Toyota	Previa		1991–1992	326		
Toyota	Previa		1993–1997	302		
Toyota	RAV4		1996	328		
Toyota	RAV4		2005	480		
Toyota	Van		1987–1988	200		
Triumph (MC)	Thunderbird		1995–1999	311		
Vespa (MC)	ET2, ET4		2001–2002	378		
Vespa (MC)	LX and PX		2004–2005	496		
Volkswagen	Eurovan		1993–1994	306		
Volkswagen	Golf		1987	159		
Volkswagen	Golf		1988	80		
Volkswagen	Golf		2005	502		
Volkswagen	Golf III		1993	92		
Volkswagen	Golf Rallye		1988	73		
Volkswagen	Golf Rallye		1989	467		
Volkswagen	GTI (Canadian market)		1991	149		
Volkswagen	Jetta		1994–1996	274		
Volkswagen	Passat	Wagon & Sedan	2004	488		
Volkswagen	Passat 4-door	Sedan	1992	148		
Volkswagen	Transporter		1990	251		
Volkswagen	Transporter		1987	490		
Volkswagen	Transporter		1988–1989	284		
Volvo	740 GL		1992	137		
Volvo	740	Sedan	1988	87		
Volvo	850 Turbo		1995–1998	286		
Volvo	940 GL		1992	137		
Volvo	940 GL		1993	95		
Volvo	945 GL	Wagon	1994	132		
Volvo	960	Sedan & Wagon	1994	176		
Volvo	C70		2000	434		
Volvo	S70		1998–2000	335		
Yamaha (MC)	Drag Star 1100		1999–2007	497		
Yamaha (MC)	FJ1200 (4 CR)		1991	113		
Yamaha (MC)	FJR1300		2002			23
Yamaha (MC)	R1		2000	360		
Yamaha (MC)	Virago		1990–1998	301		

Issued on: September 19, 2011.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2011–24775 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 76, No. 187

Tuesday, September 27, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0993; Directorate Identifier 2011–NM–018–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767–200 and –300 series airplanes. This proposed AD would require repetitive inspections for cracking of the aft pressure bulkhead at station (STA) 1582, repair or replacement of any cracked bulkhead, and eventual replacement of the aft pressure bulkhead at STA 1582 with a new bulkhead. Accomplishing the replacement would terminate the repetitive inspections specified in this proposed AD. This proposed AD was prompted by reports of multiple site damage cracks in the radial web lap and tear strap splices of the aft pressure bulkhead at STA 1582 due to fatigue. We are proposing this AD to prevent fatigue cracking of the aft pressure bulkhead, which could result in rapid decompression of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 14, 2011.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0993; Directorate Identifier 2011–NM–018–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of multiple site damage (MSD) cracks in the radial web lap and tear strap splices of the aft pressure bulkhead at station (STA) 1582 due to fatigue. This cracking was found on multiple airplanes with 31,746 to 36,597 total flight cycles. On four airplanes, the crack findings revealed MSD fatigue cracking common to the radial web lap splices. Design changes to improve the durability of the bulkhead were made in production. This condition, if not corrected, could result in rapid decompression of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Other Relevant Rulemaking

On February 25, 2004, we issued AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004), for certain Model 767–200 and –300 series airplanes. That AD requires repetitive inspections of the aft pressure bulkhead web, and corrective action if necessary.

On January 31, 2005, we issued AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on February 28, 2005 (70 FR 12119, March 11, 2005), for certain Model 767 airplanes. That AD requires repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. That AD also requires one-time detailed and high frequency eddy current inspections of any ''oil-can'' located on the aft pressure bulkhead, and related corrective actions if necessary.

Since issuance of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004); and AD 2005–03–11, Amendment 39–13967 (70 FR 12119, March 11, 2005); the manufacturer has developed design changes that improve the durability of the bulkhead; therefore,

we have determined that further rulemaking is necessary, and this proposed AD follows from that determination. Accomplishing the inspections required by this AD terminates the repetitive inspections required by paragraph (b) of AD 2004–05–16, and paragraph (f) of AD 2005–03–11.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009. The service information describes procedures for repetitive detailed, low- and mid-frequency eddy current inspections of the aft pressure bulkhead at STA 1582 for cracks and replacement or repair of any cracked bulkhead found. The service information also describes procedures for eventual replacement of the aft pressure bulkhead at STA 1582 with a new bulkhead, which eliminates the need for the repetitive inspections.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD Service Information

Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009, recommends accomplishing the inspections within 1,600 flight cycles after the most recent inspection done in accordance with Boeing Alert Service Bulletin 767–53A0026, Revision 5, dated January 29, 2004; however, it does not include a grace period for airplanes that might have exceeded that number of flight cycles since accomplishing the most recent inspection, or for airplanes on which the inspections have not been initiated. This proposed AD includes a grace period of 1,600 flight cycles for all airplanes.

Clarification of Certain Requirements

Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009, specifies replacing the bulkhead at STA 1582 with a new bulkhead if any crack is found during any inspection; however, paragraph 3.B.2., of the Accomplishment Instructions specifies repairing or replacing the bulkhead at STA 1582 if any crack is found. This proposed AD requires either replacing or repairing any cracked bulkhead and doing the repetitive inspections if the crack is repaired, until the replacement required by paragraph (h) of this proposed AD is done.

Costs of Compliance

We estimate that this proposed AD affects 83 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	22 work-hours × $85 per hour = $1,870 per inspection cycle.	0	$1,870	$155,210
Replacement	1,541 work-hours × $85 per hour = $130,985	$399,539	530,524	44,033,492

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0993; Directorate Identifier 2011–NM–018–AD.

Comments Due Date

(a) We must receive comments by November 14, 2011.

Affected ADs

(b) Certain requirements of this AD affect certain requirements of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004); and AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005),

corrected on February 28, 2005 (70 FR 12119, March 11, 2005).

Applicability

(c) This AD applies to The Boeing Company Model 767–200 and -300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD was prompted by reports of multiple site damage cracks in the radial web lap and tear strap splices of the aft pressure bulkhead at station (STA) 1582 due to fatigue. We are issuing this AD to prevent fatigue cracking of the aft pressure bulkhead, which could result in rapid decompression of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Compliance

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

Repetitive Inspections

(g) Except as provided by paragraph (h) of this AD: Before the accumulation of 43,000 total flight cycles, or within 1,600 flight cycles after the effective date of this AD, whichever occurs later, do detailed, low-frequency eddy current, and mid-frequency eddy current inspections for cracking of the aft pressure bulkhead at STA 1582, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009. If any crack is found, before further flight, replace the bulkhead as required by paragraph (h) of this AD, or repair the crack in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009, and repeat the inspections thereafter at intervals not to exceed 1,600 flight cycles. If no crack is found, repeat the inspections thereafter at intervals not to exceed 1,600 flight cycles. Accomplishing the inspections required by this paragraph terminates the repetitive inspections required by paragraph (b) of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004); and paragraph (f) of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on February 28, 2005 (70 FR 12119, March 11, 2005).

Replacement

(h) Except as provided by paragraph (g) of this AD: Before the accumulation of 43,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later: Replace the aft pressure bulkhead at STA 1582 with a new bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009. Accomplishing the replacement in this paragraph terminates the repetitive inspections required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Related Information

(j) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone (425) 917–6577; fax (425) 917–6590; e-mail: *berhane.alazar@faa.gov.*

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

Issued in Renton, Washington, on September 7, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24748 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

17 CFR Parts 400, 401, 402, 403, 405, and 420

[Docket No. BPD GSRS 11–01]

RIN 1535–AA02

Government Securities Act Regulations; Replacement of References to Credit Ratings and Technical Amendments

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (''Treasury'' or ''We'') is issuing this proposed rule to solicit public comment on a proposed amendment to the regulations issued under the Government Securities Act of 1986, as amended (''GSA''), to replace references to credit ratings in our rules with alternative requirements. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires Federal agencies to remove from their applicable regulations any reference to or requirement of reliance on credit ratings and to substitute a standard of creditworthiness as the agency determines appropriate for such regulations. In this release Treasury is requesting comment on a substitute standard of creditworthiness for use in the liquid capital rule required by GSA regulations. Separately, we are proposing in this release several non-substantive, technical amendments to Treasury's GSA regulations to update certain information or to delete certain requirements that are no longer applicable.

DATES: Submit comments on or before November 28, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

Use the Federal eRulemaking Portal (*http://www.regulations.gov*) and follow the instructions for submitting comments through the Web site. You may download this proposed amendment from *http://www.regulations.gov* or the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov.*

Paper Comments

Send paper comments to Bureau of the Public Debt, Government Securities Regulations Staff, 799 9th Street, NW., Washington, DC 20239–0001.

Please submit your comments using only one method, along with your full name and mailing address. We will post all comments on the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov.* The proposed amendment and comments will also be available for public inspection and copying at the Treasury Department Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Chuck Andreatta, or Kevin Hawkins, Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632.

SUPPLEMENTARY INFORMATION: We are proposing to amend Treasury's liquid capital rule for registered government securities brokers and dealers under the GSA regulations at 17 CFR part 402 (''liquid capital rule'') to remove references to credit ratings and substitute a standard of creditworthiness. We are proposing this amendment in order to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'').[1] At the same time, we are seeking neither to narrow nor broaden the scope of financial instruments that would qualify for beneficial treatment under the existing rule. Section 939A(a) of the Dodd-Frank Act requires that Federal agencies, to the extent applicable, ''review (1) any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument; and (2) any references to or requirements in such regulations regarding credit ratings.'' Section 939A(b) requires the agency to modify any regulations identified to ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of creditworthiness'' as the agency determines to be appropriate for such regulations.[2]

[1] Public Law 111–203, 124 Stat. 1376.

[2] *See* Section 939A of the Dodd-Frank Act.

I. Current Liquid Capital Rule

Treasury's liquid capital rule (17 CFR 402.2) prescribes minimum regulatory capital requirements for registered government securities brokers and dealers. In general, the liquid capital rule is a minimum ratio requirement of liquid capital to risk, as measured using various ''haircuts.''[3] Specifically, a government securities broker or dealer may not permit its liquid capital to be below an amount equal to 120 percent of ''total haircuts,'' which is the sum of ''credit risk haircuts'' and ''market risk haircuts'' calculated by each government securities broker or dealer.[4]

In describing the method for registered government securities brokers and dealers to calculate their minimum capital requirements, the liquid capital rule categorizes certain dollar-denominated securities, debt instruments, and derivative instruments as ''Treasury market risk instruments.''[5] These instruments receive a more favorable capital treatment than instruments that are more susceptible to changes in value due to market fluctuations, which receive a higher ''other securities haircut.''[6] The definition of Treasury market risk instruments includes commercial paper, which, in order to receive the more favorable haircut treatment of Treasury market risk instruments must be, ''of no more than one year to maturity [and] rated in one of the three highest categories by at least two nationally recognized statistical rating organizations.''[7]

The liquid capital rule includes three references to a rating by a nationally recognized statistical rating organization (''NRSRO''), *i.e.,* a credit rating, each in regard to commercial paper. NRSROs are credit rating agencies that are subject to Securities and Exchange Commission registration and oversight.

II. Proposed Amendments to the Liquid Capital Rule

In conformance with section 939A of the Dodd-Frank Act, Treasury is proposing to remove from the liquid capital rule the three references to credit ratings[8] that currently are used to determine whether specific issues of commercial paper are eligible to be treated as Treasury market risk instruments for haircut purposes. In place of these references, and as a substitute alternative standard of creditworthiness, Treasury is proposing to amend the term ''Treasury market risk instrument'' in the liquid capital rule to include commercial paper that ''has only a minimal amount of credit risk as reasonably determined by the government securities broker or dealer pursuant to written policies and procedures the government securities broker or dealer establishes, maintains, and enforces to assess creditworthiness.'' In making this assessment, the government securities broker or dealer would be required to follow written policies and procedures that it would establish, maintain, and enforce. In making an assessment of credit and liquidity risk, the government securities broker or dealer could consider the following factors, to the extent appropriate, with respect to commercial paper.[9] The range and type of specific factors considered, and the frequency of their review, would vary depending on the particular commercial paper under review.

- Credit spreads (*i.e.,* whether it is possible to demonstrate that a position in commercial paper is subject to a minimal amount of credit risk based on the spread between the commercial paper's yield and the yield of Treasury or other securities, or based on credit default swap spreads that reference the security);
- Liquidity (*i.e.,* whether the commercial paper can be sold quickly at a minimal transaction cost);
- Securities-related research (*i.e.,* whether providers of securities-related research believe the issuer of the commercial paper will be able to meet its financial commitments, generally, or specifically, with respect to the commercial paper held by the government securities broker or government securities dealer);
- Internal or external credit risk assessments (*i.e.,* whether credit assessments developed internally by the government securities broker or government securities dealer or externally by a credit rating agency, irrespective of its status as an NRSRO, express a view as to the credit risk associated with a particular security);

[3] A ''haircut'' in the context of Treasury's liquid capital rule refers to a deduction in the market value of securities or other instruments held by a government securities broker or dealer as part of net worth for calculating its liquid capital.

[4] *See* §§ 402.2(a) and 402.2(g).

[5] *See* § 402.2(e).

[6] *See* § 402.2a(b).

[7] *See* § 402.2(e)(1)(v), § 402.2a—Schedule A Instructions for Line 3, and § 404.2a—Schedule B.

[8] *Id.*

[9] This list of factors is not exhaustive or mutually exclusive. It is patterned after the list of factors proposed by the Securities and Exchange Commission in its current proposed amendments to Exchange Act Rule 15c3–1, and the Rule's appendices, to remove references to credit ratings in the Commission's Net Capital Rule. 76 FR 26550 (May 6, 2011).

• Default statistics (*i.e.,* whether providers of credit information relating to securities express a view that the commercial paper has a probability of default consistent with other commercial paper with a minimal amount of credit risk);

• Inclusion on an index (*i.e.,* whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a minimal amount of credit risk);

• Price and/or yield (*i.e.,* whether the price and yield of a security are consistent with other securities that the government securities broker or government securities dealer has reasonably determined are subject to a minimal amount of credit risk and whether the price resulted from active trading); and

• Factors specific to the commercial paper market (*e.g.,* general liquidity conditions).

If the government securities broker or dealer determines through its assessment that the commercial paper has more than a minimal amount of credit risk, the commercial paper would not be classified as a Treasury market risk instrument, and would therefore receive the less favorable ''other securities haircut'' in the liquid capital computation. Similarly, if the government securities broker or dealer does not have written policies and procedures to assess creditworthiness, all commercial paper would receive the ''other securities haircut'' treatment.

Under Treasury's GSA regulations that govern recordkeeping requirements,[10] which generally incorporate the SEC's Rule 17a–4 recordkeeping requirements for brokers and dealers,[11] each government securities broker or dealer would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the written policies and procedures that it establishes, maintains, and enforces for assessing credit risk for commercial paper. The SEC has proposed amending Rule 17a–4 to include in the list of records required to be preserved the written policies and procedures a broker-dealer establishes, maintains, and enforces to assess creditworthiness.[12] No amendment is necessary to Treasury's recordkeeping requirements in § 404.3 because they incorporate by reference the SEC's Rule 17a–4.

A government securities broker's or dealer's process for establishing creditworthiness and its written policies and procedures documenting that process would be subject to review in regulatory examinations by the SEC and self-regulatory organizations. There are three registered government securities brokers and dealers, none of which currently or routinely hold commercial paper.

We are requesting comment on all aspects of this proposed amendment. In addition, we request comment on the following specific questions:

• Is the proposed approach appropriate or are there alternative approaches that we should consider?

• What is the expected impact on government securities brokers and dealers and other market participants?

• Are there other factors a government securities broker or dealer should use when making an assessment of the credit risk of commercial paper?

• Should the list of factors be included in the text of the liquid capital rule? Should the list be published as guidance?

• How often should a government securities broker or dealer be required to update its assessment of the credit risk of commercial paper to ensure that it remains current?

• Is the proposed recordkeeping requirement for government securities brokers' and dealers' written policies and procedures, as incorporated by reference to the SEC's Rule 17a–4 (and proposed amendments), adequate to ensure government securities brokers' and dealers' compliance with their written policies and procedures on an indefinite basis?

• What would be the appropriate level of regulatory oversight of a government securities broker or dealer's credit determination processes? How should a government securities broker or dealer be able to demonstrate to regulators the adequacy of the processes that it adopts and that it is following them?

• How consistent should credit determination criteria be across brokers and dealers?

III. Proposed Amendments to Reporting Requirements and Other Amendments

As part of our review of our Federal regulations required by Executive Order 13563, we are proposing to streamline the GSA regulations by deleting certain requirements. Specifically, we are proposing to delete the sections in our reporting requirements that refer to year 2000 (''Y2K'') readiness reports because they are no longer needed.[13] We are also proposing to delete references to various other requirements in the GSA regulations that are contingent on actions to be taken by specific dates in the past and therefore are no longer applicable.

IV. Special Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

This proposed amendment would potentially affect three registered government securities brokers or dealers, none of which currently or routinely hold commercial paper. Accordingly, at this time, Treasury is not submitting a Paperwork Reduction Act submission related to the proposed rule's information collection requirements. Additionally, because the proposed amendment would not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

List of Subjects in 17 CFR Part 400

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, we propose that 17 CFR 400.2 be revised as follows:

PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for part 400 continues to read as follows:

Authority: 15 U.S.C. 78o–5.

2. Section 400.2 is amended by revising the last sentence of paragraph (c)(7)(i) to read as follows:

[10] *See* § 404.3(a).

[11] *See* 17 CFR 240.17a–4.

[12] 76 FR 26552 (May 6, 2011). OMB Control No. 3235–0279.

[13] *See* § 405.2 paragraphs (a)(11) through (a)(14).

§ 400.2 Office responsible for regulations; filing of requests for exemption, for interpretations and of other materials.

* * * * *

(c) * * *

(7) * * *

(i) * * * These documents will be made available at the following location: Treasury Department Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

List of Subjects in 17 CFR Part 401

Banks, banking, Brokers, Government securities.

For the reasons set out in the preamble, we propose that 17 CFR 401.7 and 401.8 be deleted.

PART 401—EXEMPTIONS

1. The authority citation for part 401 continues to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(a)(4)).

2. Sections 401.7 and 401.8 are deleted and section 401.9 is redesignated as section 401.7.

List of Subjects in 17 CFR Part 402

Brokers, Government securities.

For the reasons set out in the preamble, we propose that 17 CFR 402.2e be deleted and that 402.1, 402.2 and 402.2a be amended as follows:

PART 402—FINANCIAL RESPONSIBILITY

1. The authority citation for part 402 continues to read as follows:

Authority: 15 U.S.C. 78o-5(b)(1)(A), (b)(4), Pub. L. 111–203, 124 Stat. 1376.

2. Section 402.1 is amended by revising paragraph (f) to read as follows:

§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

* * * * *

(f) This part shall be effective July 25, 1987.

3. Section 402.2 is amended by revising paragraphs (b)(1), (b)(2), (c)(1), (c)(2), and (e)(1)(v) to read as follows:

§ 402.2 Capital requirements for registered government securities brokers and dealers.

* * * * *

(b)(1) *Minimum liquid capital for brokers or dealers that carry customer accounts.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those persons within the meaning of § 240.15c3–1(a)(2)(i) of this title, shall have and maintain liquid capital in an amount not less than $250,000, after deducting total haircuts as defined in paragraph (g) of this section.

(2) *Minimum liquid capital for brokers or dealers that carry customer accounts, but do not generally hold customer funds or securities.* Notwithstanding the provisions of paragraphs (a) and (b)(1) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and is exempt from the provisions of § 240.15c3–3 of this title, as made applicable to government securities brokers and dealers by § 403.4 of this chapter, pursuant to paragraph (k)(2)(i), shall have and maintain liquid capital in an amount not less than $100,000, after deducting total haircuts as defined in paragraph (g) of this section.

(c)(1) *Minimum liquid capital for introducing brokers that receive securities.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that introduces on a fully disclosed basis transactions and accounts of customers to another registered or noticed government securities broker or dealer but does not receive, directly or indirectly, funds from or for, or owe funds to, customers, and does not carry the accounts of, or for, customers shall have and maintain liquid capital in an amount not less than $50,000, after deducting total haircuts as defined in paragraph (g) of this section.

* * * * *

(2) *Minimum liquid capital for introducing brokers that do not receive or handle customer funds or securities.* Notwithstanding the provisions of paragraphs (a), (b) and (c)(1) of this section, a government securities broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers, and does not carry accounts of, or for, customers and that effects ten or fewer transactions in securities in any one calendar year for its own investment account shall have and maintain liquid capital in an amount not less than $25,000, after deducting total haircuts as defined in paragraph (g) of this section.

* * * * *

(e) * * *

(1) * * *

(v) Commercial paper of no more than one year to maturity and which has only a minimal amount of credit risk as reasonably determined by the government securities broker or dealer pursuant to written policies and procedures the government securities broker or dealer establishes, maintains, and enforces to assess creditworthiness;

* * * * *

4. Section 402.2a is amended by revising the Instructions to Schedule A, Line 3, paragraph c., and Instructions to Schedule B, Columns 3 and 4, paragraph (5) to read as follows:

§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

* * * * *

Instructions to Schedules A Through E

* * * * *

Schedule A—Liquid Capital Requirement Summary Computation

* * * * *

c. Enter the credit volatility haircut which equals a factor of 0.15 percent applied to the larger of the gross long or gross short position in money market instruments qualifying as Treasury market risk instruments which mature in 45 days or more, in futures and forwards on these instruments that are settled on a cash or delivery basis, and in futures and forwards on time deposits described in § 402.2(e)(1)(vii), that mature in 45 days or more, settled on a cash or delivery basis. Money market instruments qualifying as Treasury market risk instruments are (1) Marketable certificates of deposit with no more than one year to maturity, (2) bankers acceptances, and (3) commercial paper of no more than one year to maturity and which has only a minimal amount of credit risk as reasonably determined by the government securities broker or dealer pursuant to written policies and procedures the government securities broker or government securities dealer establishes, maintains, and enforces to assess creditworthiness.

* * * * *

Schedule B—Calculation of Net Immediate Position in Securities and Financings

* * * * *

(5) Commercial paper of no more than one year to maturity and which has only a minimal amount of credit risk as reasonably determined by the government securities broker or dealer pursuant to written policies and procedures the government securities broker or dealer establishes, maintains, and enforces to assess creditworthiness; and

* * * * *

§ 402.5a [Deleted]

5. Section 402.5a is deleted.

List of Subjects in 17 CFR Part 403

Banks, banking, Brokers, Government securities.

For the reasons set out in the preamble, 17 CFR part 403 is amended as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

1. The authority citation for part 403 continues to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; sec. 4(b), Pub. L. 101–432, 104 Stat. 963; sec. 102, sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(a)(5), (b)(1)(A), (b)(4)).

§ 403.7 [Amended]

2. Section 403.7 is amended by deleting paragraphs (d) and (e).

List of Subjects in 17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we propose that 17 CFR 405.2 and 405.5 be amended as follows:

PART 405—REPORTS AND AUDIT

1. The authority citation for part 405 continues to read as follows:

Authority: 15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

§ 405.2 [Amended]

2. Section 405.2 is amended by deleting paragraphs (a)(11) through (a)(14) and redesignating paragraphs (a)(15) and (a)(16) as paragraphs (a)(11) and (a)(12), respectively.

§ 405.5 [Amended]

3. Section 405.5 is amended by deleting paragraph (a)(7).

List of Subjects in 17 CFR Part 420

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, we propose that 17 CFR part 420 be amended as follows:

PART 420—LARGE POSITION REPORTING

1. The authority citation for part 420 continues to read as follows:

Authority: 15 U.S.C. 78o–5(f).

2. Section 420.4 is amended by deleting paragraphs (a)(2) and (a)(3), and redesignating paragraph (a)(1) as paragraph (a) to read as follows:

§ 420.4 Recordkeeping.

(a) An aggregating entity that controls a portion of its reporting entity's reportable position in a recently-issued Treasury security, when such reportable position of the reporting entity equals or exceeds the minimum large position threshold, shall be responsible for making and maintaining the records prescribed in this section.

* * * * *

Mary J. Miller,

Assistant Secretary for Financial Markets.

[FR Doc. 2011–24785 Filed 9–26–11; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2011–0443]

RIN 1625–AA01

Anchorage Regulations; Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the shape and expand the dimensions of anchorage ''D'' at Newport, Rhode Island, to better accommodate increasing cruise ship visits to Newport and to improve navigation safety.

DATES: Comments and related material, including requests for public meetings, must be received by the Coast Guard on or before October 27, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0443 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Edward G. LeBlanc, Chief, Waterways Management Division, Coast Guard Sector Southeastern New England, at 401–435–2351, or *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0443), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0443'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0443'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This proposed rule would change the shape and expand the dimensions of anchorage ''D'' at Newport, Rhode Island, to better accommodate increasing cruise ship visits to Newport, and to improve navigation safety.

Discussion of Proposed Rule

This proposed rule is intended to change the shape and expand the size of anchorage ''D'' west of Goat Island, Newport, RI, to safely accommodate up to three cruise ships simultaneously. Currently, it is a trapezoid-shaped anchorage of approximately 0.11 square nautical miles that can safely accommodate only two cruise ships simultaneously. Over the past several years cruise ship visits to Newport, RI, have been more frequent. On occasion, there is a need to anchor up to three cruise ships simultaneously in anchorage ''D''. For the convenience and safety of passengers, an increase in the size of the anchorage is necessary. The Coast Guard believes the depth of water, water-sheet area, and density of vessel traffic in the vicinity of Newport west of Goat Island are sufficient to accommodate this change.

Consequently, the Coast Guard proposes to change the shape of anchorage ''D'' from a trapezoid to a square, and expand its size from approximately 0.11 to 0.24 square nautical miles. The proposed rule also includes specific anchorage points when there are one, two, or three vessels anchored in anchorage ''D''.

This proposed rule will not change the current provision in 33 CFR 110.145(a)(4)(i) and (ii) that gives preference to the U.S. Navy from May 1 to October 1 each year should it require the anchorage, and allows temporary floats or buoys for marking of anchors or moorings.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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

We expect the economic impact of this proposed would not be significant because it only modifies the shape of a currently-existing anchorage at Newport, RI. Although it also would increase the size of the anchorage, the water-sheet area covered by the proposed anchorage is still less than 0.25 square nautical miles.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels that have a need to anchor in anchorage ''D'' at Newport, RI.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would only modify the shape of a currently-existing anchorage at Newport, RI, and although it also would increase the size of the anchorage, the water-sheet area covered by the proposed anchorage is still less than 0.25 square nautical miles. It would not impose new requirements that would affect vessels' schedules or their ability to transit in the Newport, RI, area or Narragansett Bay, nor would it require the purchase of any new equipment or the hiring of any additional crew.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES** above) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Edward G. LeBlanc, Chief, Waterways Management Division, Coast Guard Sector Southeastern New England, at 401–435–2351, or *Edward.G.LeBlanc@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the modification of a currently-existing anchorage area at Newport, RI. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise paragraphs (a)(4) and (d)(2) of § 110.145 to read as follows:

§ 110.145 Narragansett Bay, R.I.

(a) * * *

(4) Anchorage D. West of Goat Island, an area bounded by the following coordinates:

Northeast Corner: 41°29.484′ N, 071°19.975′ W;

Northwest Corner: 41°29.484′ N, 071°20.578′ W;

Southwest Corner: 41°29.005′ N, 071°20.578′ W;

Southeast Corner: 41°29.005′ N, 071°19.975′ W.

(i) * * *

(iii) Should any part of an anchored vessel extend into the recommended vessel route in the East Passage of Narragansett Bay, a securite call notifying mariners of the vessel's exact position and status shall be made at least hourly on VHF channels 13 and 16.

(iv) As much as practicable, vessels anchoring will do so in the following order:

Primary anchoring point: 41°29.25′ N, 071°20.15′ W;

Secondary anchoring point: 41°29.38′ N, 071°20.45′ W;

Tertiary anchoring point: 41°29.15′ N, 071°20.50′ W.

Note: ''Anchoring point'' is the intended position of the anchor at rest on the bottom of the anchorage. All coordinates referenced use datum: NAD 83.

* * * * *

(d) * * *

(2) Anchors must not be placed outside the anchorage areas, nor shall any vessel be so anchored that any portion of the hull or rigging shall at any time extend outside the boundaries of the anchorage area. However, Anchorage D is exempt from this requirement; see paragraph (a)(4) of this section.

* * * * *

Dated: September 13, 2011.

Daniel A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2011–24729 Filed 9–26–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2007–1145; FRL–9471–7]

RIN 2060–AO72

Extension of Comment Period for Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period for the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur to October 10, 2011.

DATES: The public comment period will be extended to October 10, 2011.

ADDRESSES: Written comments on this proposed rule may be submitted to the EPA electronically, by mail, by facsimile, or through hand delivery/courier.

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket No. EPA–HQ–OAR–2007–1145, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2007–1145, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., 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–OAR–2007–1145. The 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 information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket

A complete set of documents related to the proposal is available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Questions concerning the ''Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur'' proposed rule should be addressed to Rich Scheffe, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, (C304–02), Research Triangle Park, NC 27711, telephone: (919) 541–4650, e-mail: *scheffe.rich@epa.gov.*

SUPPLEMENTARY INFORMATION:

Extension of public comment period. The EPA has received requests for additional time from stakeholders and has decided to extend the comment period by 10 days to allow interested parties to have additional time to prepare their comments. The proposal was published in the **Federal Register** on August 1, 2011, (76 FR 46084) and is available on the following Web site: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_fr.html.*

How can I get copies of this document and other related information?

The EPA has established the official public docket for the ''Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur'' under Docket Number EPA–HQ–OAR–2007–1145. The EPA has also developed a Web site for the proposal at the address given above. Please refer to the proposal, published in the **Federal Register** on August 1, 2011, (76 FR 46084) for detailed information on accessing information related to the proposal.

Dated: September 21, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–24856 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0839; FRL–9469–7]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indianapolis Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's request to redesignate the Indianapolis, Indiana nonattainment area (Hamilton, Hendricks, Johnson, Marion, and Morgan Counties) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$), because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Indiana Department of Environmental Management (IDEM) submitted this request on October 20, 2009, and supplemented it on May 31, 2011. EPA's proposed approval involves several additional related actions. EPA is proposing to make a determination that the Indianapolis area has attained the 1997 annual $PM_{2.5}$ standard. EPA is proposing to approve, as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS through

2025 in the area. EPA is proposing to approve the 2006 emissions inventory for the Indianapolis area as meeting the comprehensive emissions inventory requirement of the CAA. Finally, EPA finds adequate and is proposing to approve Indiana's Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2025 for the Indianapolis area.

DATES: Comments must be received on or before October 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0839, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: Aburano.Douglas@epa.gov.*
3. *Fax:* (312) 408–2779.
4. *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the determination of attainment, redesignation, and SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial action 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 rule, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 12, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–24375 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2008–0395; FRL–9469–8]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of Lake and Porter Counties to Attainment of the Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In an April 3, 2008, submittal, supplemented on March 6, 2009, May 26, 2011, and July 20, 2011, the Indiana Department of Environmental Management (IDEM) requested redesignation of the Lake and Porter Counties, Indiana portion (Lake and Porter Counties) of the Chicago-Gary-Lake County, Illinos-Indiana (IL–IN) nonattainment area (Greater Chicago nonattainment area) to attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). EPA is proposing to approve the redesignation request for Lake and Porter Counties, along with related Indiana State Implementation Plan (SIP) revisions, including the State's plan for maintaining attainment of the $PM_{2.5}$ standard in this area through 2025, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is also proposing to approve Indiana's 2025 Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for Lake and Porter Counties, as well as the 2005 $PM_{2.5}$-related emissions inventories for this area.

DATES: Comments must be received on or before October 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0395, by one of the following methods:

- *http://http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Mooney.John@epa.gov.*
- *Fax:* (312) 692–2551.
- *Mail:* John Mooney, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John Mooney, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0395. 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 and viruses. For additional instructions on submitting comments, go to section I 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 U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, or *Doty.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What actions is EPA proposing?
III. What is the background for these actions?
A. Fine Particulate Standards and Regional Emission Controls
B. Background for Indiana's $PM_{2.5}$ Redesignation Request and Maintenance Plan
IV. What are the criteria for redesignation to attainment?
V. Review of the State's $PM_{2.5}$ Redesignation Request and Basis for EPA's Proposed Actions
A. Has the greater Chicago nonattainment area attained the 1997 annual $PM_{2.5}$ standard?
B. Have Lake and Porter Counties and the State of Indiana met all requirements of Section 110 and Part D of the CAA applicable for purposes of redesignation, and do Lake and Porter Counties have a fully approved SIP under Section 110(k) of the CAA for purposes of redesignation to attainment?
C. Are the $PM_{2.5}$ air quality improvements in the Chicago-Gary-Lake County, IL–IN area due to permanent and enforceable emission reductions?
D. Does Indiana have a fully approvable $PM_{2.5}$ maintenance plan pursuant to Section 175A of the CAA for Lake and Porter Counties?
VI. Has the State adopted acceptable MVEBs for the $PM_{2.5}$ maintenance period?
VII. Are the base year emissions inventories for Lake and Porter Counties approvable under CAA Section 172(c)(3)?
VIII. What are EPA's proposed actions and what are the effects of these proposed actions?
IX. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or to organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified in the proposed rule.

II. What actions is EPA proposing?

On November 27, 2009, at 74 FR 62243, EPA made a final determination that the Greater Chicago nonattainment area, which includes Lake and Porter Counties in Indiana, was attaining the 1997 annual $PM_{2.5}$ standard. EPA is proposing here to determine that this area continues to attain this standard. EPA is also proposing to take several additional actions related to Indiana's $PM_{2.5}$ redesignation request, as discussed below. In a separate proposed rule, EPA will address an Illinois $PM_{2.5}$ redesignation request for the Illinois portion of the Greater Chicago nonattainment area.

EPA is proposing to approve Indiana's 1997 annual $PM_{2.5}$ standard maintenance plan for Lake and Porter Counties as a revision of the Indiana SIP meeting the requirements of section 175A of the CAA. The maintenance plan, as revised in the May 26, 2011, submittal, assumes that control of power plant emissions resulting from the implementation of EPA's Cross-State Air Pollution Rule (CSAPR) will replace existing power plant emission control requirements that would have resulted from EPA's Clean Air Interstate Rule (CAIR). See discussions of CAIR and CSAPR and their relation to Indiana's $PM_{2.5}$ redesignation request and maintenance plan later in this proposed rule.

EPA is proposing to approve 2005 emissions inventories for primary $PM_{2.5}$,[1] NO_X, and sulfur dioxide (SO_2),[2] documented in Indiana's May 26, 2011, $PM_{2.5}$ redesignation request submittal, as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current, and accurate emission inventory.

EPA is proposing to find that Indiana meets the requirements for redesignation of Lake and Porter Counties to attainment of the 1997 annual $PM_{2.5}$ standard under section 107(d)(3)(E) of the CAA. We are making this proposal despite the fact that Indiana, in part, relied on emission reductions from CAIR to demonstrate, under section 107(d)(3)(E)(iii) of the CAA, that permanent and enforceable emission reductions were responsible for the monitored improvements in the $PM_{2.5}$ air quality of the Greater Chicago nonattainment area. As will be discussed further below, because CAIR was remanded by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), the emission reductions associated with that rule cannot be considered to be permanent and enforceable.

EPA, however, proposes that this requirement has effectively been met because the emission reductions of CAIR continue through 2011, and CSAPR requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through 2011, and because CSAPR has now been promulgated to address the emission reduction requirements previously addressed by CAIR and gets similar or greater emission reductions in the relevant areas in 2012 and beyond, EPA is

[1] Primary $PM_{2.5}$ are fine particulates directly emitted by sources and are not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[2] NO_X and SO_2 are precursors for fine particulates formed through chemical reactions and other related processes in the atmosphere.

proposing to determine that the emission reductions that led to attainment of the 1997 annual $PM_{2.5}$ standard in the Greater Chicago nonattainment area can now be considered to be permanent and enforceable. For this reason, EPA is proposing to determine that the requirement of CAA section 107(d)(3)(D)(iii) has now been met. Therefore, EPA is proposing to approve the request from the State of Indiana to change the designation of Lake and Porter Counties from nonattainment to attainment of the 1997 annual $PM_{2.5}$ NAAQS.

Finally, EPA is proposing to approve 2025 primary $PM_{2.5}$ and NO_X MVEBs for Lake and Porter Counties documented in Indiana's $PM_{2.5}$ maintenance plan, as submitted on May 26, 2011. These MVEBs will be used in future transportation conformity analyses for these counties.

III. What is the background for these actions?

A. Fine Particulate Standards and Regional Emission Controls

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site (1997 annual $PM_{2.5}$ standard). In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard, at 65 $\mu g/m^3$, based on a three-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site. On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 $\mu g/m^3$ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations and classifications for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Greater Chicago area as nonattainment for the 1997 annual $PM_{2.5}$ standard.

In response to legal challenges of the 2006 annual $PM_{2.5}$ standard, the DC Circuit remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual $PM_{2.5}$ standard also indicates attainment of the remanded 2006 annual standard. Since the Greater Chicago area is designated as nonattainment only for the 1997 annual $PM_{2.5}$ standard, today's proposed action addresses redesignation to attainment only for this standard, and, as noted above, only for the Indiana portion of this nonattainment area.

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X from power plants, mobile sources, and other combustion sources.

Given the significance of sulfates and nitrates in the formation of $PM_{2.5}$ in and transport of $PM_{2.5}$ into the Greater Chicago nonattainment area, the regulation of SO_2 and NO_X emissions from power plants strongly affects the area's air quality. EPA proposed CAIR on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and to improve air quality in many areas across Eastern United States. However, on July 11, 2008, the D.C. Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. 2008)). EPA petitioned for a rehearing, and the court issued an order remanding CAIR and the CAIR FIPs to EPA without vacatur (*North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008)). The court, thereby, left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion (id. at 1178). The court directed EPA to ''remedy CAIR's flaws'' consistent with the July 11, 2008, opinion, but declined to impose a schedule on EPA for completing this action (id). As a result of these court rulings, the power plant emission reductions that resulted solely from the development, promulgation, and implementation of CAIR, and the associated air quality improvement that occurred solely as a result of CAIR in the Greater Chicago nonattainment area and elsewhere with emissions contributing to $PM_{2.5}$ concentrations in this area could not be considered to be permanent.

On August 8, 2011, at 75 FR 48208, EPA promulgated CSAPR to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. CAIR, among other things, required NO_X emission reductions that contributed to the air quality improvement in the Greater Chicago nonattainment area. CAIR emission reduction requirements limit emissions through 2011, and EPA has now promulgated CSAPR, which requires similar or greater emission reductions in the relevant areas in 2012 and beyond. CSAPR requires substantial reductions of SO_2 and NO_X emissions from Electric Generating Units (EGUs or power plants) across most of the Eastern United States, with implementation beginning on January 1, 2012. By 2014, EGUs in states common to both CSAPR and CAIR will achieve annual SO_2 emission reductions of approximately 1.8 million tons, and will achieve annual NO_X emission reductions of approximately 76,000 tons beyond those that would have been achieved by CAIR by that time. CAIR will continue to be implemented through 2011, and will be replaced by CSAPR beginnig in 2012.

As demonstrated later in this proposed rule, CSAPR requires reduction of NO_X and SO_2 emissions to levels well below the levels that led to attainment of the 1997 annual $PM_{2.5}$ standard in the Greater Chicago nonattainment area. The emission reductions that CSAPR mandates may be considered to be permanent and enforceable. In turn, the air quality improvement in the Greater Chicago nonattainment area that has resulted from EGU emission reductions to date (as well as the substantial further air quality improvement that would be expected to result from full implementation of CSAPR) may also be considered to be permanent and enforceable.

B. Background for Indiana's $PM_{2.5}$ Redesignation Request and Maintenance Plan

On April 3, 2008, IDEM submitted a request for EPA approval of a redesignation of Lake and Porter Counties to attainment of the 1997 annual $PM_{2.5}$ standard. This redesignation request is based on 2004–2007 monitoring data showing attainment of the standard throughout the Greater Chicago nonattainment area. On March 6, 2009, IDEM submitted a technical addendum to the April 3, 2008, $PM_{2.5}$ redesignation request to show that the Greater Chicago nonattainment area continued to attain

the 1997 annual $PM_{2.5}$ standard through 2008.

In addition to showing that this area has attained the 1997 annual $PM_{2.5}$ standard, the April 3, 2008, State submittal also seeks to demonstrate that Indiana has met all other CAA requirements for redesignation of Lake and Porter Counties to attainment of the 1997 annual $PM_{2.5}$ standard. The redesignation request includes a maintenance plan for Lake and Porter Counties demonstrating maintenance of the 1997 annual $PM_{2.5}$ standard through 2020. Both the redesignation request and the maintenance demonstration rely on emission reductions resulting from CAIR to demonstrate the basis for the attainment of the 1997 annual $PM_{2.5}$ standard and to demonstrate maintenance of this standard.

Before EPA could rule on the August 3, 2008, redesignation request, as amended in the March 6, 2009, supplemental submittal, the D.C. Circuit remanded CAIR to EPA for reconsideration. This raised questions about the emission reduction credits resulting from CAIR assumed in Indiana's $PM_{2.5}$ redesignation request and maintenance plan. As time passed without resolution of the CAIR issue, EPA also became concerned about the period covered by Indiana's $PM_{2.5}$ maintenance demonstration, which must, at a minimum, demonstrate attainment of the 1997 annual $PM_{2.5}$ standard for at least ten years after EPA approves the State's $PM_{2.5}$ redesignation request. See section 175A(a) of the CAA. This necessitated a revision of the $PM_{2.5}$ maintenance plan by the State to extend the maintenance demonstration to a later endpoint.

On May 26, 2011, IDEM submitted a revised $PM_{2.5}$ maintenance plan to EPA demonstrating maintenance of the 1997 annual $PM_{2.5}$ in Lake and Porter Counties through 2025. In this submittal, the State included additional air quality data showing continued attainment of the 1997 annual $PM_{2.5}$ standard in the Greater Chicago nonattainment area during 2008–2010.

The State held a public hearing on the $PM_{2.5}$ redesignation request and maintenance plan on May 18, 2011, and the State's public comment period on these submittal elements ended on May 20, 2011. Following the close of the public comment period, Indiana submitted a revised $PM_{2.5}$ redesignation request and final $PM_{2.5}$ maintenance plan for Lake and Porter Counties on July 20, 2011.

Indiana requests that the maintenance plan be approved by EPA as a revision of the Indiana SIP. The maintenance plan documents 2025 $PM_{2.5}$ and NO_X MVEBs, which IDEM requests EPA to approve and find adequate for use in transportation conformity determinations and demonstrations.[3]

IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows redesignation to attainment provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from the implementation of the applicable SIP, Federal emission control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

V. Review of the State's $PM_{2.5}$ Redesignation Request and Basis for EPA's Proposed Actions

A. Has the Greater Chicago nonattainment area attained the 1997 annual $PM_{2.5}$ standard?

In a final rulemaking dated November 27, 2009, at 76 FR 62243, EPA determined that the Greater Chicago nonattainment area had attained the 1997 annual $PM_{2.5}$ standard. This determination was based on complete, quality-assured air monitoring data for 2006–2008.

The April 3, 2008, IDEM $PM_{2.5}$ redesignation request presents $PM_{2.5}$ data for the period of 2005–2007, and the May 26, 2011, IDEM submittal presents $PM_{2.5}$ data for the period of 2008–2010. These quality-assured data show that the Greater Chicago nonattainment area attained the 1997 annual $PM_{2.5}$ standard beginning in 2005–2007, and has continued to attain through 2010. Preliminary data available for 2011 are consistent with continued attainment.

Table 1 provides a summary of the $PM_{2.5}$ annual air quality data for the area for the period of 2008–2010.

TABLE 1—$PM_{2.5}$ ANNUAL AVERAGE CONCENTRATIONS FOR THE GREATER CHICAGO NONATTAINMENT AREA

(in $\mu g/m^3$)

County	Monitoring site AQS site number	2008	2009	2010	3-Year average
Indiana Monitoring Sites					
Lake	Franklin School, 180890006	11.95	11.34	12.48	11.9
Lake	Griffith, 180890027	11.69	11.00	12.39	11.7
Lake	Hammond-Purdue, 180892004	11.66	(1)	12.30	(1)
Lake	Hammond-Clark High School, 180892010	12.42	10.80	11.90	11.7
Lake	Gary-Madison Street, 180890031	12.27	12.12	12.90	12.4
Porter	Ogden Dunes, 181270024	10.89	11.29	11.56	11.2
Illinois Monitoring Sites					
Cook	Chicago-Washington High School, 170310022	12.54	11.62	14.04	12.7
Cook	Chicago-Southeast Police Station, 170310050	11.80	10.99	12.47	11.8
Cook	Chicago-Mayfair Pump Station, 170310052	12.18	12.69	12.57	12.5
Cook	Chicago-Springfield Pump Station, 170310057	12.03	11.33	[1] 12.03	[1] 11.8

[3] Transportation conformity assures that emissions from on-road mobile sources do not jeopardize continued maintenance of the standard during the maintenance period.

TABLE 1—$PM_{2.5}$ ANNUAL AVERAGE CONCENTRATIONS FOR THE GREATER CHICAGO NONATTAINMENT AREA—Continued

(in μg/m³)

County	Monitoring site AQS site number	2008	2009	2010	3-Year average
Cook	Chicago-Commonwealth Edison Maintenance Building, 170310076.	11.89	11.12	12.25	11.8
Cook	Blue Island, 170312001	12.50	11.68	11.59	11.9
Cook	Schiller Park, 170313103	13.59	12.91	12.64	13.0
Cook	Summit, 170313301	12.03	11.62	12.23	12.0
Cook	Des Plaines, 170314007	11.35	11.02	10.60	11.0
Cook	Northbrook, 170314201	10.09	9.33	9.34	9.6
Cook	Cicero, 170316005	[1] 13.25	[1] 11.98	11.90	[1] 12.4
DuPage	Naperville, 170434002	11.28	9.83	11.67	10.9
Kane	Elgin, 170890003	10.79	9.61	11.29	10.6
Kane	Aurora, 170890007	10.34	10.01	11.44	10.6
Lake	Zion, 170971007	9.34	8.83	9.66	9.3
McHenry	Cary, 171110001	10.10	9.65	10.24	10.0
Will	Joliet, 171971002	11.66	10.52	11.83	11.3
Will	Braidwood, 171971011	10.31	8.73	10.02	9.7

Notes: (1) The data for these sites and/or years do not meet data completeness requirements.

The data in table 1 show that all $PM_{2.5}$ monitors in the Greater Chicago nonattainment area have recorded $PM_{2.5}$ concentrations attaining the 1997 annual $PM_{2.5}$ standard during 2008–2010. These annual average $PM_{2.5}$ concentrations are based on $PM_{2.5}$ monitoring data that have been quality assured and stored in EPA's Air Quality System (AQS) database.

Further consideration of annual $PM_{2.5}$ concentrations at several sites is necessary because data at these sites do not meet EPA data completeness requirements. Under 40 CFR part 50, appendix N, section 4.1 (addressing the annual $PM_{2.5}$ standard), a year of $PM_{2.5}$ data meets completeness requirements when ''at least 75 percent of the scheduled sampling days for each quarter has valid data.'' As noted in table 1, three sites in the Greater Chicago nonattainment area did not meet this data completeness requirement for one or more years: the Hammond-Purdue (180892004) sites, located in Lake County, Indiana; and, the Chicago-Springfield Pump Station (170310057) and Cicero (170316005) sites, both located in Cook County, Illinois.

Data handling conventions and computations necessary for determining whether areas have met the 1997 annual $PM_{2.5}$ standard, including requirements for data completeness, are listed in appendix N of 40 CFR part 50. The use of less than complete data is subject to the approval of the EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data, as set forth at 40 CFR part 50, appendix N, section N.1(c).

Two of the identified sites are similar in that they have only one year with incomplete data during the three years of data considered in table 1: 2009 for the Hammond-Purdue (Indiana) site; and, 2010 for the Chicago-Springfield Pump Station (Illinois) site. For these sites, we note that, for the three-year periods preceding the years with the missing data, each site had complete data showing attainment of the 1997 annual $PM_{2.5}$ standard. For the Hammond-Purdue site, complete 2006–2008 data show annual $PM_{2.5}$ concentrations of 12.67, 13.8, and 11.66 μg/m³, with an average of 12.7 μg/m³ for the three-year period (see data tables on pages A–1 and A–2 of appendix A of Indiana's May 26, 2011, submittal). For the Chicago-Springfield Pump Station site, complete 2007–2009 data show annual $PM_{2.5}$ concentrations of 15.18, 12.03, and 11.33 μg/m³, with an average of 12.85 μg/m³ for the three-year period (see data tables on pages A–6 and A–7 of appendix A of Indiana's May 26, 2011, submittal). Therefore, both of these sites are able to show attainment of the standard with complete data for the preceding three-year periods. For the 2008–2010 period, there are available complete data for nearby sites, such as Hammond-Clark High School and Chicago-Mayfair Pump Station, that show attainment of the 1997 annual $PM_{2.5}$ standard (See table 1). EPA, thus, concludes that the Hammond-Purdue and Chicago-Springfield Pump Station sites monitored attainment of the 1997 annual $PM_{2.5}$ standard during 2008–2010. EPA is using these data because it finds that the States of Indiana and Illinois have exercised due diligence in their monitoring, no monitoring site closures or moves were involved for these sites, and nearby $PM_{2.5}$ concentrations suggest that the partial evidence of $PM_{2.5}$ concentrations at the Hammond-Purdue and Chicago-Springfield Pump Station sites are indeed indicative that the 1997 annual $PM_{2.5}$ standard has been attained at these sites.

For Cicero, both 2008 and 2009 have incomplete monitoring data. We previously determined that this site had attained the 1997 annual $PM_{2.5}$ standard based on 2006–2008 monitoring data. See our proposed and final determination of attainment at 74 FR 48690 (September 24, 2009) and at 74 FR 62243 (November 27, 2009). In the proposed determination, we discussed our analysis of $PM_{2.5}$ concentrations for the Cicero monitoring site and our conclusion that, although the $PM_{2.5}$ data for this site did not meet EPA's data completeness criteria in 2008, it is likely that this site monitored attainment of the 1997 annual $PM_{2.5}$ standard in 2008 and throughout 2006–2008.

EPA has conducted $PM_{2.5}$ data substitution tests for the 2009 $PM_{2.5}$ data at the Cicero monitoring site (170316005), to evaluate how to address the issue of data completeness. The results helped EPA assess whether the Cicero monitoring site monitored attainment of the 1997 annual $PM_{2.5}$ standard. On the basis of these tests, and additional factors discussed below, we have concluded that the data should be considered complete and should be approved for the purpose of showing that this site attained the 1997 annual $PM_{2.5}$ standard based on 2007–2009 and 2008–2010 monitoring data. EPA is using these data because it finds that the State of Illinois has exercised due diligence in its monitoring, no monitoring site closures or moves were involved for this site, and nearby $PM_{2.5}$

concentrations, such as those for the Blue Island monitoring site, suggest that the partial evidence of $PM_{2.5}$ concentrations at the Cicero monitoring site are indeed indicative that the 1997 annual $PM_{2.5}$ standard is being attained at this site. See $PM_{2.5}$-related data links and spreadsheets with data for this monitoring site at: *http://www.epa.gov/airtrends/values.html.*

For the reasons discussed above, EPA proposes to determine that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 annual $PM_{2.5}$ standard based on quality-assured data for 2008–2010.

B. Have Lake and Porter Counties and the State of Indiana met all requirements of section 110 and part D of the CAA applicable for purposes of redesignation, and do Lake and Porter Counties have a fully approved SIP under section 110(k) of the CAA for purposes of redesignation to attainment?

1. General Requirements

Sections 107(d)(3)(E)(ii) and 107(d)(3)(E)(v) of the CAA set forth related requirements that together require the State to have a fully approved SIP meeting all pertinent requirements under section 110 and part D of the CAA as a prerequisite for approval of the State's redesignation request. The following discussion addresses Indiana's satisfaction of these criteria.

Since the passage of the CAA in 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements needed to attain the particulate standards in Lake and Porter Counties and elsewhere in Indiana. Indiana submitted the ''State of Indiana Air Pollution Control Implementation Plan,'' Indiana's SIP, on January 31, 1972. EPA approved Indiana's SIP on May 31, 1972 (37 FR 10863). Rules contained in this SIP addressed attaining the Total Suspended Particulate (TSP) standard, reflecting the particulate size range regulated under 1971 air quality standards.

On July 1, 1987, EPA replaced the TSP standard with a standard for particles with aerodynamic diameters of 10 micrometers or smaller (PM_{10}). EPA promulgated area designations under the PM_{10} NAAQS on March 15, 1991 (56 FR 11101). Lake County was designated and classified as moderate nonattainment for the PM_{10} standard. Through submittals on June 16, 1993, December 9, 1993, September 8, 1994, and November 17, 1994, the State of Indiana submitted the emission control regulations, emissions inventories, attainment demonstrations, and other plan elements needed to comply with the SIP requirements for PM_{10}. EPA approved Indiana's PM_{10} SIP on June 15, 1995, at 60 FR 31412.

2. Section 110(a) Requirements

On December 7, 2007, September 19, 2008, March 23, 2011, and April 7, 2011, Indiana made submittals addressing ''infrastructure SIP'' elements required by section 110(a)(2) of the CAA for the 1997 annual $PM_{2.5}$ standard and 1997 8-hour ozone standard. EPA published proposed rulemaking on these submittals on April 28, 2011, at 76 FR 23757, and finalized that rulemaking on July 13, 2011, at 76 FR 41075, approving Indiana's infrastructure SIP for these air quality standards. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of Lake and Porter Counties.

EPA finds that section 110 requirements not linked to an area's nonattainment status are not applicable for purposes of redesignation. See the Reading, Pennsylvania proposed and final rulemakings (October 10, 1996, at 61 FR 53174–53176, and May 7, 1997, at 62 FR 24826), the Cleveland-Akron-Loraine, Ohio final rulemaking (May 7, 1996, at 61 FR 20458), and the Tampa, Florida final rulemaking (December 7, 1995, at 60 FR 62748). Therefore, these section 110(a)(2) SIP elements, which are unrelated to an area's attainment status, are not applicable requirements for purposes of review of the State's $PM_{2.5}$ redesignation request.

3. Emission Inventories

Section 172(c)(3) of the CAA calls for the State to provide a complete, accurate, and comprehensive emissions inventory of source emissions. In today's action EPA proposes to approve Indiana's 2005 emissions inventories as meeting this requirement. These emissions inventories are addressed in sections V.C and VII below, and are documented in appendices B through G of Indiana's May 26, 2011, submittal. See the EPA digital docket for this proposed rule, *http://www.regulations.gov,* which includes a digital copy of Indiana's May 26, 2011, submittal.

The basis for EPA's proposed approval of the emissions inventories is set forth in the discussions of emission inventory development techniques and sources of input data used to determine the emissions inventories in section V.C.2 below and in an additional discussion of the 2005 base year emissions inventories for Lake and Porter Counties in section VII of this proposed rule.

4. Other Nonattainment Area Requirements

EPA is proposing to determine that, if it issues final approval of the emission inventories discussed below under CAA section 172(c)(3), the Indiana SIP will meet the SIP requirements for Lake and Porter Counties applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, sections 172 to 176 of the CAA, set forth the nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas.

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's November 27, 2009, determination that the Greater Chicago nonattainment area is attaining the 1997 $PM_{2.5}$ annual standard suspended Indiana's obligation to submit plans meeting most of the CAA attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Indiana's obligation to submit a $PM_{2.5}$ attainment demonstration, and requirements to provide for Reasonable Further Progress (RFP) toward attainment, Reasonably Available Control Measures (RACM), and contingency measures under section 172(c)(9) of the CAA.

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard.

Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation, as long as the area continues to attain the standard through final EPA approval of the State's redesignation request. See also 40 CFR 51.1004(c). The RFP requirement under section 172(c)(2) and contingency measures requirement under section 172(c)(9) are similarly not relevant for purposes of redesignation since EPA has determined that the area has attained the 1997 $PM_{2.5}$ annual standard.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and

modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment area New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.''

Indiana has demonstrated that emissions will remain at or below attainment levels throughout the maintenance period without part D NSR in effect for Lake and Porter Counties. Therefore, the State need not have a fully approved part D NSR program prior to the approval of Indiana's redesignation request for Lake and Porter Counties. The State's PSD program will become effective in Lake and Porter Counties upon redesignation of these Counties to attainment of the 1997 annual $PM_{2.5}$ standard. See rulemakings for Detroit, Michigan (March 7, 1995, at 60 FR 12467–12468); Cleveland-Akron-Lorain, Ohio (May 7, 1996, at 61 FR 20458, 20469–20470); Louisville, Kentucky (October 23, 2001; at 66 FR 53665); and Grand Rapids, Michigan (June 21, 1996, at 61 FR 31834–31837).

Section 172(c)(6) of the CAA requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment of the standard in the Greater Chicago nonattainment area has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2) of the CAA. As noted above, we find that the Indiana SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the SIPs. EPA approved Indiana's general and transportation conformity SIPs on January 14, 1998, at 63 FR 2146, and on August 17, 2010, at 75 FR 50730, respectively. Indiana has submitted on-road motor vehicle budgets for Lake and Porter Counties for 2016 and 2025. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of EPA's maintenance plan approval.

No other SIP provisions relevant to Lake and Porter Counties are currently disapproved, conditionally approved, or partially approved.

C. Are the $PM_{2.5}$ air quality improvements in the Chicago-Gary-Lake County, IL-IN area due to permanent and enforceable emission reductions?

Section 107(d)(3)(E)(iii) requires the State to demonstrate that the improvement in air quality is due to permanent and enforceable emission reductions.

1. Permanent and Enforceable Emission Controls

The following is a discussion of permanent and enforceable emission control measures that have been implemented in Lake and Porter Counties, in the Greater Chicago nonattainment area, and in upwind areas (resulting in lower pollutant transport into the Greater Chicago nonattainment area).

a. Federal Emission Control Measures

Reductions in $PM_{2.5}$ precursor emissions have occurred statewide and in upwind areas as a result of the following Federal emission control measures. Most of these Federal emission control measures will result in additional emission reductions in the future.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower Volatile Organic Compounds (VOC), NO_X, and SO_2 emissions from new cars and light-duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles), 77 percent; light-duty trucks, minivans, and sport utility vehicles, 86 percent; and, larger sport utility vehicles, vans, and heavier trucks, 69 to 95 percent. Some of the emissions reductions resulting from new vehicle standards occurred during the 2008–2010 attainment period; however, additional reductions will continue to occur throughout the maintenance period as the fleet of older vehicles turns over. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Indiana prior to January 2006 had a sulfur content of approximately 500 ppm. Sulfur occurs naturally in gasoline, but interferes with the operation of catalytic converters. Lowering the sulfur content of gasoline improves the emission reduction resulting from the use of catalytic converters and results in significantly lowered NO_X emissions. In addition, lowering the sulfur content of gasoline also reduces direct emissions of sulfates (direct $PM_{2.5}$) from vehicles.

Heavy-Duty Diesel Engine Rule. This rule, which EPA issued in July 2000, limited the sulfur content of diesel fuel and went into effect in 2004. A second phase of implementation took effect in 2007 and resulted in reduced $PM_{2.5}$ emissions from heavy-duty highway diesel engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The full implementation of this rule is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions (including direct emissions of sulfates) and a 95 percent reduction in NO_X emissions for new engines using low sulfur diesel fuel, compared to existing engines using higher sulfur content fuel. The reductions in fuel sulfur content occurred by the 2008–2010 attainment period. Some of the emissions reductions resulting from new vehicle standards also occurred during the 2008–2010 attainment period; however, additional reductions will continue to occur throughout the maintenance period as the fleet of older heavy-duty diesel engines turns over. This rule will also lower SO_2 emissions from engines using the low sulfur diesel fuel, resulting in lower $PM_{2.5}$ concentrations; however, EPA has not estimated the level of this emissions reduction and the level of its impact on $PM_{2.5}$ concentrations.

Nonroad Diesel Engine Standards. In May 2004, EPA promulgated a rule to establish emission standards for large nonroad diesel engines, such as those used in construction, agriculture, or mining operations (the engine emission standards are phased in between 2008 and 2014) and to regulate the sulfur content in nonroad diesel fuel. This rule reduced the allowable sulfur content in nonroad diesel fuel by over 99 percent. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm in sulfur content. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010. The combined engines standards and fuel sulfur

content limits reduce NO_X and $PM_{2.5}$ emissions (including direct emissions of sulfates) from large nonroad diesel engines by over 90 percent compared to pre-control nonroad engines using the higher sulfur content diesel fuel. This rule achieved all of the reductions in fuel sulfur content by 2010. Some emissions reductions from the new engine emission standards were realized over the 2008–2010 time period; although most of the reductions will occur during the maintenance period as the fleet of older nonroad diesel engines turns over.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines, such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines, including off-highway motorcycles, all-terrain vehicles, and snowmobiles; and, recreational marine diesel engines. Emission standards for large spark-ignition engines were implemented in two phases (tiers), with Tier 1 starting in 2004 and Tier 2 starting in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine diesel engine standards were phased in from 2004 through 2009. With full implementation of all of these standards, an overall 72 percent reduction in VOC, and 80 percent reduction in NO_X emissions are expected by 2020. A significant portion of these emission reductions occurred by 2008, the year Indiana has selected to be the attainment baseline year in the demonstration of maintenance discussed later in this proposed rule. Additional emission reductions will occur in Lake and Porter Counties, statewide in Indiana and Illinois, and in upwind areas during the maintenance period for Lake and Porter Counties.

b. Control Measures in Upwind Areas

Given the significance of sulfates and nitrates as components of $PM_{2.5}$ in the Greater Chicago nonattainment area, the area's $PM_{2.5}$ air quality in this area is strongly affected by regulation of SO_2 and NO_X emissions from power plants in this nonattainment area and in upwind areas. The following considers the emission control measures that have affected these emissions.

NO_X SIP Call. On October 27, 1998, at 63 FR 57356, EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP call beginning in 2004, and with Phase II beginning in 2007. The NO_X SIP call established state-specific NO_X emission caps, assuming possible NO_X emission control levels for various source types within EGUs and using EGU-specific historical operating data. States, including Indiana, have adopted NO_X emission control regulations for EGUs (and for other major stationary NO_X sources) to achieve the state-specific NO_X emission caps. These NO_X emission caps are supported by periodic reporting of state NO_X emissions to the EPA. The reduction in NO_X emissions has resulted in lower concentrations of transported NO_X and $PM_{2.5}$ into the Greater Chicago $PM_{2.5}$ nonattainment area. Emission reductions resulting from state regulations developed in response to the NO_X SIP call are permanent and enforceable.

CAIR. See the detailed discussion of CAIR in section III of this proposed rule.

CSAPR. See the discussion of CSAPR in section III of this proposed rule.

All of the emission reduction requirements discussed above have led to (or will lead to) substantial emission reductions and have been shown by Indiana and EPA (in analyses supporting CAIR and CSAPR) to be the main cause of the emission reductions discussed below.

2. Emission Reductions

To demonstrate that significant emission reductions have resulted in attainment, Indiana compared the NO_X, SO_2, and primary $PM_{2.5}$ emissions for 2002 and 2005 with those of 2008. The emissions inventories for 2008 represent a year in which the area was attaining the 1997 annual $PM_{2.5}$ standard.

The 2002, 2005, and 2008 point source emissions were obtained from Indiana's source facility emissions reporting program for Lake and Porter Counties. Point source emissions for Illinois' portion of the Greater Chicago nonattainment area [4] were derived from 2002 and 2008 point source emissions documented in Illinois' ''Maintenance Plan for the Chicago Nonattainment Area for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard'' (Illinois' $PM_{2.5}$ maintenance plan) prepared in September 2010. The 2005 point source emissions for Illinois' portion of the $PM_{2.5}$ nonattainment area were interpolated using Illinois' 2002 and 2008 point source emission estimates. EPA's Clean Air Market's Acid Rain database (*http://camddataandmaps.epa.gov/gdm/*) was also used to estimate SO_2 and NO_X emissions for certain point sources.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOBILE6.2, and other mobile source input data, including vehicle age and type distributions and speeds, derived using Northwest Indiana Regional Planning Commission's (NIRPC's) travel demand model.

Area source emissions for Lake and Porter Counties for 2002 and 2005 were taken from Indiana's 2002 and 2005 periodic emissions inventories.[5] The 2005 periodic emission inventory area source emissions were extrapolated to 2008. Source growth factors were supplied for area and nonroad mobile sources by the Lake Michigan Air Directors Consortium (LADCO). Area source emissions for the Illinois portion of the Greater Chicago nonattainment area were obtained from the 1997 annual $PM_{2.5}$ maintenance plan submitted by Illinois on October 15, 2010.

Nonroad mobile source emissions were extracted or extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

Pre-2008 EGU emissions were derived from EPA's Clean Air Market's Acid Rain database. These emissions reflect Indiana's SO_2 and NO_X emission budgets resulting from EPA's NO_X SIP call. The 2008 emissions from EGUs reflect Indiana's emission caps under EPA's CAIR.

The 2002 and 2005 base year NO_X, SO_2, and primary $PM_{2.5}$ emission totals by source sector are given in table 2.

[4] Emissions for the Illinois portion of the $PM_{2.5}$ nonattainment area must be considered along with the emissions for Lake and Porter Counties to demonstrate the emission reductions resulting in attainment of the $PM_{2.5}$ standard and to demonstrate maintenance of the $PM_{2.5}$ standard for the entire bi-state $PM_{2.5}$ nonattainment area.

[5] Periodic emission inventories are developed by states every three years and reported to EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

TABLE 2—LAKE AND PORTER COUNTIES 2002 AND 2005 EMISSION TOTALS BY SOURCE SECTOR

[Tons per year]

Pollutant	Point	Area	On-road mobile	Off-road mobile	Totals
2002 Lake and Porter Counties Emission Totals					
NO_X	60,808.11	2,626.91	30,397.97	12,347.30	106,180.29
SO_2	59,263.34	4364.85	264.64	1,106.59	64,999.42
Primary $PM_{2.5}$	7,313.70	4,404.91	562.64	685.43	12,966.68
2005 Lake and Porter Counties Emission Totals					
NO_X	41,948.57	2,236.89	14,095.55	8,145.64	66,426.65
SO_2	48,139.53	697.87	146.44	892.93	49,876.77
Primary $PM_{2.5}$	6,451.40	23.65	229.39	447.87	7,152.31

The 2008 emissions totals for SO_2, NO_X, and primary $PM_{2.5}$ for Lake and Porter Counties are summarized in table 3. These emissions establish attainment year emissions levels for Lake and Porter Counties.

TABLE 3—LAKE AND PORTER COUNTIES 2008 EMISSION TOTALS BY SOURCE SECTOR

[Tons per year]

Pollutant	Point	Area	On-road mobile	Off-road mobile	Totals
NO_X	39,945.76	2,264.46	10,703.81	6,667.71	59,581.74
SO_2	54,916.02	703.25	103.08	476.33	56,198.68
Primary $PM_{2.5}$	6,676.32	23.66	187.10	363.91	7,250.93

The emissions totals in tables 2 and 3 for NO_X show significant emission reductions occurred in Lake and Porter Counties between 2002 and 2005, and NO_X emissions continued this downward trend between 2005 and 2008. The emissions for SO_2 and primary $PM_{2.5}$ also show significant reductions between 2002 and 2008, but do not show such a downward trend between 2005 and 2008. We believe that the significant downward trends in NO_X emissions more significantly contributed to the improved $PM_{2.5}$ air quality observed between 2002/2005 and 2008 than the smaller reductions in SO_2 and primary $PM_{2.5}$ emissions.

Table 4 presents the NO_X, SO_2, and primary $PM_{2.5}$, emission totals for the entire Greater Chicago nonattainment area for 2002, 2005, and 2008. This table provides a compelling demonstration of the reduction in $PM_{2.5}$ and $PM_{2.5}$ precursor emissions between 2002, when the area was violating the 1997 annual $PM_{2.5}$ standard, and 2005, when the area was in attainment of the 1997 annual $PM_{2.5}$ standard.

TABLE 4—CHICAGO-GARY-LAKE COUNTY, IL-IN NONATTAINMENT AREA 2002, 2005, AND 2008 EMISSION TOTALS

[Tons per year]

Year	NO_X	SO_2	Primary $PM_{2.5}$
2002	447,601.29	197,480.42	32,069.68
2005	346,671.15	164,171.77	25,962.31
2008	278,649.74	152,367.68	25,767.93

IDEM finds that the emission reductions in Lake and Porter Counties and in the Illinois portion of the Greater Chicago nonattainment area which are permanent and enforceable were primarily responsible for the area's attainment of the 1997 annual $PM_{2.5}$ standard, but acknowledges that emission reductions from throughout Indiana and Illinois and from other upwind states also contributed to the area's attainment. We agree with this conclusion.

In addition to the local and $PM_{2.5}$ nonattainment area emission reductions, we believe that regional NO_X and SO_2 emission reductions resulting from the implementation of the Acid Rain Program (ARP) (see 40 CFR parts 72 through 78), the NO_X SIP call, and CAIR have significantly contributed to the $PM_{2.5}$ air quality improvement in the Greater Chicago nonattainment area. To assess the change in regional emissions from states believed to significantly contribute to annual $PM_{2.5}$ concentrations in the Greater Chicago nonattainment area, we have considered statewide emissions for EGUs reported for 2002 and 2008 in EPA's ARP/CAIR database. To limit the number of states considered, we have selected those states with emissions that have been modeled to have significantly contributed to elevated $PM_{2.5}$ concentrations in Cook County, Illinois (a modeling receptor site considered to be representative of the regional pollutant transport into Greater Chicago nonattainment area), as documented in EPA's proposed rule for CSAPR (August 2, 2010, 75 FR 45210) and in technical analyses supporting CSAPR and its proposed rule (*http://www.epa.gov/airtransport/techinfo.html*). Table 5 lists the statewide total NO_X and SO_2 emissions for EGUs for the selected States.

TABLE 5—STATEWIDE EGU EMISSIONS FOR 2002 AND 2008

[Tons per year]

State	NO_X			SO_2		
	2002	2008	Percent reduction	2002	2008	Percent reduction
Illinois	174,246	119,930	31.2	353,699	257,357	27.2
Indiana	281,146	190,092	32.4	778,868	565,459	27.4
Iowa	78,956	49,023	37.9	127,847	109,293	14.5
Kentucky	198,598	157,903	21.4	482,653	344,356	28.7
Michigan	132,623	107,623	18.9	342,998	326,500	4.8
Minnesota	86,663	60,230	30.5	101,285	71,926	29.0
Ohio	370,497	235,049	36.6	1,132,069	709,914	37.3
Pennsylvania	200,909	183,658	8.6	889,765	831,914	6.5
Wisconsin	88,970	47,794	46.3	191,256	129,693	32.1
Total	1,612,708	1,151,302	28.6	4,400,440	3,346,412	24.0

As can be seen in table 5, the implementation of CAIR resulted in significant reductions in regional statewide NO_X and SO_2 emissions from EGUs in the states EPA finds are contributing significantly to the annual $PM_{2.5}$ concentrations in the Greater Chicago nonattainment area. CAIR requirements address emissions through 2011. CSAPR in turn requires similar or greater emission reductions in the nine states identified in table 5 starting in 2012. The upwind emission reduction requirements that contributed to the air quality improvements in the Greater Chicago nonattainment, thus, can be considered to be permanent and enforceable.

In summary, the local emissions data provided by the State of Indiana support the conclusion that significant permanent and enforceable NO_X and SO_2 emission reductions have occurred in the Greater Chicago nonattainment area. For the reasons set forth above, we also conclude that significant permanent and enforceable emission reductions have occurred in regional emissions, thus bolstering the observed improvement in annual $PM_{2.5}$ concentrations in the Greater Chicago nonattainment area. We thus believe that Indiana's redesignation request meets the requirement of section 107(d)(3)(E)(iii) of the CAA.

D. Does Indiana have a fully approvable $PM_{2.5}$ maintenance plan pursuant to section 175A of the CAA for Lake and Porter Counties?

Sections 107(d)(3)(E)(iv) and 175A of the CAA require that the State demonstrate that the area to be redesignated will continue to meet the $PM_{2.5}$ NAAQS for at least a ten-year maintenance period after EPA's approval of the redesignation. Indiana's maintenance plan includes emission inventories that demonstrate that emissions of SO_2, NO_X, and primary $PM_{2.5}$ in the Greater Chicago nonattainment area will remain at or below the attainment year levels for the ten-year period after EPA takes action to approve Indiana's redesignation request.

As part of Indiana's redesignation request for Lake and Porter Counties, the State included projected NO_X, SO_2, and primary $PM_{2.5}$ emissions inventories for the $PM_{2.5}$ nonattainment area for 2015, 2020, and 2025. These projected inventories were compared to the 2008 attainment year emissions inventories to demonstrate maintenance of the 1997 annual $PM_{2.5}$ standard in the Greater Chicago nonattainment area. The on-road mobile source emission components of the 2015 (projected to 2016) and 2025 emissions inventories were also used to establish MVEBs for Lake and Porter Counties to be used in transportation conformity demonstrations. See the discussion of the MVEBs below in section VI of this proposed rule.

For each of the applicable pollutants and projection years, Indiana prepared emission estimates for four types of anthropogenic sources: point sources; area sources; on-road mobile sources; and, nonroad mobile sources. Biogenic emissions were assumed to remain constant, and were not considered in the maintenance demonstration analysis.

The projected 2015, 2020, and 2025 emissions were estimated by IDEM, with assistance from LADCO, the Illinois Environmental Protection Agency, and NIRPC. Table 6 lists the projected NO_X, SO_2, and primary $PM_{2.5}$ emissions along with the 2008 emissions by source sector for Lake and Porter Counties.

TABLE 6—LAKE AND PORTER COUNTIES 2008, 2015, 2020, AND 2025 EMISSIONS BY SOURCE SECTOR

[Tons per year]

Pollutant	Point	Area	On-road mobile	Off-road mobile	Totals
2008 Lake and Porter Counties Emissions Totals					
NO_X	39,945.76	2,264.46	10,703.81	6,667.71	59,581.74
SO_2	54,916.02	703.25	103.08	476.33	56,198.68
Primary $PM_{2.5}$	6,676.32	23.66	187.10	363.91	7,250.93
2015 Lake and Porter Counties Emissions Totals					
NO_X	28,883.26	2,226.21	5,723.67	4,962.17	41,795.31
SO_2	42,394.24	682.86	66.23	267.22	43,410.55
Primary $PM_{2.5}$	6,650.33	22.70	136.61	248.01	7,057.65

TABLE 6—LAKE AND PORTER COUNTIES 2008, 2015, 2020, AND 2025 EMISSIONS BY SOURCE SECTOR—Continued

[Tons per year]

Pollutant	Point	Area	On-road mobile	Off-road mobile	Totals
2020 Lake and Porter Counties Emissions Totals					
NO_X	27,832.65	2,187.09	3,004.68	4,057.84	37,082.26
SO_2	38,493.19	664.67	72.76	215.27	39,445.89
Primary $PM_{2.5}$	6,566.86	21.97	114.32	185.11	6,888.26
2025 Lake and Porter Counties Emissions Totals					
NO_X	26,980.09	2,148.80	2,534.95	3,349.95	35,013.79
SO_2	35,888.27	647.07	76.51	175.39	36,787.24
Primary $PM_{2.5}$	6,484.75	21.29	115.39	140.67	6,762.10

Table 7 lists the projected emissions for the Greater Chicago nonattainment area along with the 2008 emissions for this area.

TABLE 7—CHICAGO-GARY-LAKE COUNTY, IL-IN $PM_{2.5}$ NONATTAINMENT AREA PROJECTED EMISSIONS TOTALS

[Tons per year]

Year	NO_X	SO_2	Primary $PM_{2.5}$
2008	278,649.74	152,367.68	32,069.68
2015	187,557.31	107,285.55	25,128.65
2020	156,231.26	98,829.89	24,729.26
2025	149,198.79	99,453.24	25,074.10

Comparison of the 2008 and projected 2015, 2020, and 2025 emissions demonstrates that future emissions through 2025 show that the emissions levels should remain below the 2008 emission levels in Lake and Porter Counties and in the Greater Chicago area. Therefore, the State has demonstrated maintenance of the $PM_{2.5}$ standard in this area for a period extending ten years and beyond from the time EPA may be expected to complete rulemaking on the State's $PM_{2.5}$ redesignation request for Lake and Porter Counties.

In addition to maintenance of local emissions at or below attainment levels, EPA considered the continued impact of regional emissions levels since we believe that these emissions will contribute significantly to annual $PM_{2.5}$ concentrations during the maintenance period. Based on the same states identified in CSAPR as significant contributors of $PM_{2.5}$ precursor emissions (see table 5 and its related discussion above), table 8 compares these state's statewide EGU emissions for 2008 (the attainment year), derived from the CAIR emissions database, with the 2012–2013 and 2014 and beyond (2014+) statewide EGU emission budgets established in the preamble to the CSAPR (table VI.D–3, 76 FR 48261). The CSAPR emission budgets listed in table 8 do not include state-specific source variability limits or source set-aside emission limits, otherwise established in CSAPR.

TABLE 8—STATEWIDE EGU EMISSIONS (2008) AND EMISSION BUDGETS IN THE CROSS-STATE AIR POLLUTION RULE

[Tons per year]

State	2008	2012–2013 CSAPR emission budget	2014 and later CSAPR emission budget
NO_X			
Illinois	119,930	47,872	47,872
Indiana	190,092	109,726	108,424
Iowa	49,023	38,335	37,424
Kentucky	157,903	85,086	77,238
Michigan	107,623	60,193	57,812
Minnesota	60,230	29,572	29,572
Missouri	88,742	52,374	48,717
Ohio	235,049	92,703	87,493
Pennsylvania	183,658	119,986	119,194
Wisconsin	47,794	31,628	30,398
Total	1,240,044	667,475	644,144

TABLE 8—STATEWIDE EGU EMISSIONS (2008) AND EMISSION BUDGETS IN THE CROSS-STATE AIR POLLUTION RULE—Continued

[Tons per year]

State	2008	2012–2013 CSAPR emission budget	2014 and later CSAPR emission budget
SO_2			
Illinois	257,357	234,889	124,123
Indiana	565,459	285,424	161,111
Iowa	109,293	107,085	75,184
Kentucky	344,356	189,335	106,284
Michigan	326,500	194,537	143,995
Minnesota	71,926	41,981	41,981
Missouri	258,269	207,466	165,941
Ohio	709,444	310,230	137,077
Pennsylvania	831,914	278,651	112,021
Wisconsin	129,693	79,480	40,126
Total	3,604,211	1,929,078	1,107,843

The EGU emissions and emissions budgets listed in table 8 show that CSAPR is expected to result in significantly lower regional EGU emissions after 2008. Therefore, CSAPR is expected to maintain regional EGU emissions below the attainment period levels during the maintenance period for Lake and Porter Counties. These emission reductions are expected to be enforceable and generally permanent on a regional basis.[6]

The sizeable reductions in SO_2 and NO_X emissions by 2015, 2020, and 2025, relative to those in 2008, shown by comparing emissions in tables 3, 4, 6, and 7 above, are due in significant part to restrictions mandated by EPA to reduce power plant emissions of SO_2 and NO_X in the Eastern United States in order to reduce pollutant transport in this region. To develop the 2015, 2020, and 2025 EGU emission inventories, Indiana used emission projections premised on the implementation of CAIR requirements as an approximation of the emissions levels the States of Indiana and Illinois project to occur following the promulgation of CSAPR. We acknowledge that emissions following implementation of CSAPR may differ somewhat from the emissions that would have occurred under CAIR.

On the other hand, as noted above, EPA's CSAPR achieves substantial regional reductions of SO_2 and NO_X emissions from EGUs. EPA has not made emission estimates for 2020 or 2025 that are premised on the implementation of CSAPR. However, table 8 above shows the emission budgets that EPA established in CSAPR for the relevant states. These emission budgets are significantly lower than the 2008 EGU emissions in each State. CSAPR also addresses EGU emissions in the Greater Chicago nonattainment area. Given the substantial degree of control of the various EGUs in Lake and Porter Counties, and in the Greater Chicago nonattainment area as a whole, both currently and projected into the future, EPA finds Indiana's projection of such emission declines through 2025 to be appropriate forecasts of future emissions. The projected emission reductions for the Greater Chicago nonattainment area, along with the SO_2 and NO_X emission reductions expected to occur in upwind states, demonstrate continued maintenance of the $PM_{2.5}$ annual standard in the Greater Chicago nonattainment area.

In conjunction with the projections for dramatic declines in the Greater Chicago nonattainment area emissions of SO_2 and NO_X, Indiana shows that there will also be a decrease in primary $PM_{2.5}$ emissions in this area between 2008 and 2025, although the percentage of this emission reduction is relatively small compared to those of SO_2 and NO_X emissions.

Maintenance of the 1997 annual $PM_{2.5}$ air quality standard in the Greater Chicago nonattainment area is a function of regional as well as local emissions trends. The regional impacts are dominated by the impacts of SO_2 and NO_X emissions. The previous section (discussing permanent and enforceable emission reductions) showed that CSAPR is expected to provide for substantial SO_2 and NO_X emission reductions through 2014 and beyond, reductions that are expected to be maintained throughout and well beyond the period (through 2020 and 2025) addressed in Indiana's maintenance plan. This lends support to Indiana's projection that regional emission limitations in place will continue to result in low emissions in 2020 and 2025. With CSAPR, the caps on emissions of SO_2 and NO_X from the power sector will ensure against growth in SO_2 and NO_X emissions from these sources, and, in combination with motor vehicle rules and other rules, will assure a continuing decline in SO_2 and NO_X emissions. Therefore, EPA notes that available emissions data indicate that, with the implementation of CSAPR, the Greater Chicago area can be expected to maintain the standard through 2025.

EPA concludes that Indiana's maintenance plan demonstrates maintenance for the period required under section 175A of the CAA, and consideration of the impacts of CSAPR supports this conclusion.

Indiana also presented modeling analysis indicating that the Greater Chicago area will continue to attain the $PM_{2.5}$ NAAQS well into the future. This analysis was produced by LADCO, and submitted by Indiana as part of the May 26, 2011, submittal. EPA disagrees with Indiana's contention that this modeling demonstrates attainment in the Greater Chicago area in the absence of CAIR, insofar as the analysis was predicated on 2007 emission levels that already include a set of emission reductions attributable to CAIR. However, EPA contends that the analysis, showing attainment with implementation of a subset of the emission reductions expected from CAIR, supports the conclusion that implementation of the

[6] We acknowledge that differences in individual State EGU emission totals will actually occur under CSAPR because the implementation of this rule will provide for emissions trading and because each State's EGU emissions budget will be supplemented with source variability limits and new source set-asides. Nonetheless, the regional total EGU emissions will be significantly reduced as a result of the implementation of CSAPR.

full set of reductions that were expected from CAIR (or a relatively similar set of reductions from CSAPR) will also assure that the standard is maintained.

Indiana's maintenance plan contains additional elements, including a commitment to continue to operate an EPA-approved monitoring network to track ongoing compliance with the NAAQS. Indiana currently operates six ambient $PM_{2.5}$ monitors in Lake and Porter Counties. Indiana remains obligated to continue to collect and follow quality assurance procedures for monitoring data in accordance with 40 CFR part 58 and to enter all data into the Air Quality System in accordance with Federal guidelines. Indiana will use these data, supplemented with $PM_{2.5}$ monitoring data from the Illinois portion of the Greater Chicago area and any additional information necessary, to verify continued attainment of the standard. Indiana will also continue to develop and submit periodic emission inventories, as required by the Federal Consolidated Emissions Reporting Rule (codified at 40 CFR part 51 subpart A), to track future levels of emissions.

Indiana's maintenance plan also includes contingency measures as required by section 175A(d) of the CAA. The contingency measures are designed to prevent or promptly correct a violation of the NAAQS after redesignation to attainment of the standard. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation, including all measures that were in the plan prior to redesignation. Indiana's contingency measures provide that, if a violation occurs, Indiana will implement an ''Action Level Response'' to evaluate what measures are warranted to address the violation. In particular, IDEM commits to implementing one or more measures from a list of candidate measures given in the plan, or other emission control measures, as needed to correct the air quality problem. Indiana's candidate contingency measures include the following:

- Vehicle Inspection and Maintenance Enhancements
- Alternative Fuel and Diesel Retrofit Programs
- NO_X and SO_2 Emission Offsets for New and Modified Major Sources
- NO_X and SO_2 Emission Offsets for New and Modified Minor Sources
- Increased Offset Ratio for New Sources
- NO_X and SO_2 Controls on New Minor Sources
- Wood Stove Change-Out Program
- Increased Recovery Efficiency at Sulfur Recovery Plants
- Various Emission Reduction Measures or Dust Suppression for Unpaved Roads and/or Parking Lots
- Idling Restrictions
- Broader Geographic Applicability of Existing Measures, and
- Various Transportation Control Measures Sufficient To Achieve At Least a 0.5 Percent Reduction in Area-Wide $PM_{2.5}$ Precursor Emissions.

Under Indiana's plan, control measures are to be adopted and implemented within 18 months from the end of the season in which air quality triggering the Action Level Response occurs. Indiana further commits to conduct an ongoing review of its monitored data, and if monitored concentrations or emissions are trending upward, Indiana commits to take appropriate steps to avoid a violation if possible. EPA contends that Indiana's contingency plan satisfies the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Indiana commits to submit to the EPA an updated $PM_{2.5}$ maintenance plan eight years after redesignation of Lake and Porter Counties to assure maintenance for an additional ten-year period beyond the initial maintenance period. As required by section 175A of the CAA, Indiana has also committed to retain the $PM_{2.5}$ control measures contained in the SIP prior to redesignation.

For all of the reasons outlined above, EPA is proposing to approve Indiana's $PM_{2.5}$ maintenance plan for Lake and Porter Counties and the Greater Chicago area.

VI. Has the State adopted acceptable MVEBs for the $PM_{2.5}$ maintenance period?

Under section 176(c) of the CAA, transportation plans and Transportation Improvement Programs (TIPs) must be evaluated for conformity with SIPs. Consequently, Indiana's redesignation request provides MVEBs, conformance with which will assure that motor vehicle emissions are at or below levels that can be expected to provide for attainment and maintenance of the $PM_{2.5}$ NAAQS. Indiana's April 3, 2008, submittal included emission budgets for NO_X and $PM_{2.5}$ for 2010 and 2020. Indiana submitted a replacement set of budgets in its May 26, 2011, submittal. These updated budgets address the years 2016 and 2025. However, in a letter dated July 20, 2011, Indiana has requested that EPA not act on the 2016 MVEBs for Lake and Porter Counties because of concerns with the way in which these emission budgets were calculated. Since the 2025 emission budgets replace the emission budgets submitted in April 2008, EPA will no longer conduct rulemaking on the April 2008 MVEBs and will not act on the 2016 MVEBs per Indiana's request.

Table 9 shows the updated 2025 MVEBs as well as the 2025 emission projections on which these budgets are based. Table 9 also shows the 2008 on-road mobile source emissions, which are part of the emissions which have led to attainment of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL-IN area. Indiana did not provide emission budgets for SO_2, VOC, and ammonia because it concluded, consistent with EPA's presumptions regarding these $PM_{2.5}$ precursors, that emissions of these precursors from motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

TABLE 9—MOBILE SOURCE EMISSION PROJECTIONS FOR LAKE AND PORTER COUNTIES

[Tons per year]

Year	NO_X		Primary $PM_{2.5}$	
	Emissions estimate	Budget	Emissions estimate	Budget
2008	10,703.81	.....	187.09	.....
2025	2,534.95	2,915.19	115.39	132.70

Table 9 shows substantial decreases in on-road mobile source NO_X and primary $PM_{2.5}$ emissions from 2008 to 2025. The emission reductions are expected because newer vehicles, subject to more stringent emission

standards, are continually replacing older, dirtier vehicles. Indiana provided emission budgets for 2025 that include a safety margin of 15 percent above projected levels. Safety margins are included in the MVEBs to account for the wide range of assumptions that are factored into the motor vehicle emission projections. The safety margins are constrained so as to prevent any increases in on-road emissions from interfering with the maintenance of the 1997 annual $PM_{2.5}$ standard during the maintenance period. In Lake and Porter Counties, the MVEBs and motor vehicle emission projections for both NO_X and primary $PM_{2.5}$ are lower than attainment year levels.

EPA is proposing to approve the 2025 Lake and Porter Counties MVEBs into the Indiana SIP because, based on our review of the submitted maintenance plan, we have determined that the maintenance plan and MVEBs meet EPA's criteria found in 40 CFR 93.118(e)(4) for determining that MVEBs are adequate for use in transportation conformity determinations and are approvable because, when considered together with the submitted maintenance plan projected emissions, they provide for maintenance of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL-IN area.

The budgets that Indiana submitted were calculated using the MOBILE6.2 motor vehicle emissions model. EPA is proposing to approve the inventory and the conformity emission budgets calculated using this model because this model was the most current model available at the time Indiana was performing its analysis. As noted above and separate from today's proposal, EPA has issued an updated motor vehicle emissions model known as the Motor Vehicle Emission Simulator (MOVES). In its announcement of this model, EPA established a two-year grace period for continued use of MOBILE6.2 in transportation conformity determinations for transportation plans and TIPs (extending to March 2, 2012), after which states and metropolitan planning organizations (other than California) must use MOVES for transportation plan and TIP conformity determinations. (See 75 FR 9411, March 2, 2010.)

Additional information on the use of MOVES in SIPs and conformity determinations can be found in the December 2009 ''Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes.'' This guidance document is available at: *http://www.epa.gov/otaq/models/moves/420b09046.pdf.* During the conformity grace period, the state and MPO(s) should use the interagency consultation process to examine how MOVES2010a will impact their future transportation plan and TIP conformity determinations, including regional emissions analyses. For example, an increase in emission estimates due to the use of MOVES2010a may affect an area's ability to demonstrate conformity for its transportation plan and/or TIP. Therefore, state and local planners should carefully consider whether the SIP and MVEBs, transportation plans, and TIPs should be revised with MOVES2010a before the end of the conformity grace period, since doing so may be necessary to ensure conformity determinations in the future.

We would expect that states and metropolitan planning organizations would work closely with EPA and the local Federal Highway Administration and Federal Transit Administration offices to determine an appropriate course of action to address this type of situation if it is expected to occur. If Indiana chooses to revise the Lake and Porter Counties maintenance plan, it should consult the response to Question 7 of the December 2009 Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes for information on requirements related to such revisions.

VII. Are the base year emissions inventories for Lake and Porter Counties approvable under CAA section 172(c)(3)?

In addition to air quality data supporting the State's $PM_{2.5}$ redesignation request, emissions data are needed to meet CAA emission inventory requirements. Under section 172(c)(3) of the CAA, Indiana is required to submit comprehensive, accurate, and current inventories of actual emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors for each $PM_{2.5}$ nonattainment area.

As noted in table 2 above, Indiana has documented 2002 and 2005 NO_X, SO_2, and primary $PM_{2.5}$ emissions for Lake and Porter Counties. The 2005 emission inventories (and those for other years summarized above) are documented in appendices B through G of Indiana's May 26, 2011, submittal. General techniques used derive these emissions were documented in the revised $PM_{2.5}$ redesignation request included with the May 26, 2011, submittal. These derivation techniques and sources of information were discussed above in section V.C.2 of this proposed action. EPA has reviewed Indiana's documentation of the emissions inventory techniques and the data sources used for the derivation of the 2005 base year emissions and has found that Indiana has thoroughly documented the derivation of these emissions inventories.

In the May 26, 2011, submittal, IDEM states that the 2005 base year emissions inventories (and the 2008 attainment year emissions inventories) are currently the most complete emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors in Lake and Porter Counties. We conclude that the 2005 emissions inventories are complete and are as accurate as possible given the input data available to the state. Therefore, we propose to approve the 2005 $PM_{2.5}$ emissions inventories for Lake and Porter Counties as meeting the requirement of section 172(c)(3) of the CAA.

VIII. What are EPA's proposed actions and what are the effects of these proposed actions?

In its rulemaking of November 27, 2009, EPA determined that the Greater Chicago area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA's review of more recent data indicates that the area continues to attain this standard. Thus, EPA is proposing to determine that the area continues to attain the 1997 annual $PM_{2.5}$ standard. EPA is also proposing to approve Indiana's maintenance plan for Lake and Porter Counties as a SIP revision that meets the requirements of section 175A of the CAA. EPA proposes to approve the 2005 emission inventories for Lake and Porter Counties included in Indiana's May 26, 2011, submittal as satisfying the requirement in section 172(c)(3) of the CAA. Pursuant to section 107(d)(3)(E) of the CAA, EPA proposes to approve the State of Indiana's request to redesignate Lake and Porter Counties, Indiana to attainment of the 1997 annual $PM_{2.5}$ NAAQS. Finally, EPA is proposing to find adequate and to approve 2025 MVEBs for Lake and Porter Counties for purposes of future transportation conformity.

If finalized, approval of the redesignation request would change the legal designation of Lake and Porter Counties for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Finalizing EPA's proposal to approve several revisions to the Indiana SIP for Lake and Porter Counties would approve into the Indiana SIP the Lake and Porter Counties' 1997 annual $PM_{2.5}$ maintenance plan, the 2005 emission inventories submitted with the maintenance plan, and 2025 MVEBs.

IX. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: September 12, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–24376 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 10–153; RM–11602; FCC 11–120]

Facilitating the Use of Microwave for Wireless Backhaul and Other Uses and Providing Additional Flexibility To Broadcast Auxiliary Service and Operational Fixed Microwave Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks more targeted comments on proposals originally discussed in its *Notice of Inquiry* (NOI), for increasing the flexibility of our part 101 rules to promote wireless backhaul. We seek comment on certain proposals offered by parties in response to the *NOI* that we believe warrant further consideration. We also seek comment on additional ways to increase the flexibility, capacity and cost-effectiveness of the microwave bands, while protecting incumbent licensees in these bands. By enabling more flexible and cost-effective microwave services, the Commission can help accelerate deployment of fourth-generation (4G) mobile broadband infrastructure across America. In addition, we address a petition for rulemaking filed by Fixed Wireless Communications Coalition (FWCC).

DATES: Submit comments on or before October 4, 2011. Submit reply comments on or before October 25, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by WT Docket No. 10–153, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/. Follow the instructions for submitting comments.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail*: *FCC504@fcc.gov* or *phone:* (202) 418–0530 or *TTY:* (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Schauble, Deputy Chief, Wireless Telecommunications Bureau, Broadband Division, at 202–418–0797 or by e-mail to *John.Schauble@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Backhaul Further Notice of Proposed Rulemaking* (FNPRM), FCC 11–120, adopted and released on August 9, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-120A1.doc.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary

Review of Part 101 Antenna Standards

1. Section 101.115(b) of the Commission's rules establishes directional antenna standards designed

to maximize the use of microwave spectrum while avoiding interference between operators. More specifically, the Commission's rules set forth certain requirements, specifications, and conditions pursuant to which FS stations may use antennas that comply with either the more stringent performance standard in Category A (also known as Standard A) or the less stringent performance standard in Category B (also known as Standard B). In general, the Commission's rules require a Category B user to upgrade if the antenna causes interference problems that would be resolved by the use of a Category A antenna. The rule on its face does not mandate a specific size of antenna. Rather, it specifies certain technical parameters—maximum beamwidth, minimum antenna gain, and minimum radiation suppression—that, depending on the state of technology at any point in time, directly affect the size of a compliant antenna. The Commission adopts antenna specifications based on the technical sophistication of the communications equipment and the needs of the various users of the band at the time. Indeed, the Commission adopted similar technical specifications that effectively limited the size of antennas used in other bands. Periodically, the Commission has since reconsidered some of those antenna specifications in light of the technological evolution of communications equipment.

2. In the *NOI,* the Commission solicited proposals for allowing FS licensees to use smaller antennas. In the *NOI,* the Commission asked whether it should review our antenna standards in any particular band due to the sharp increase in demand for FS facilities for backhaul and other purposes. Accordingly, in the *NOI,* we asked commenting parties to: (1) Identify specific FS bands where they believe the Commission should review its antenna standards; (2) offer specific proposals for new standards; (3) describe the technological or other changes that they believe support new antenna standards; (4) describe how new antenna standards would facilitate deployment in that band; (5) discuss the impact such new antenna standards would have on other licensees in the band, including both FS licensees and other services that share the band; and (6) discuss whether the proposed standards should apply only to rural areas or to all geographical areas.

3. Based on the record received in response to the *NOI,* we seek additional comment on modifying the antenna standards set forth in the Commission's rules to permit the use of smaller antennas in the 5925–6875 MHz band (6 GHz band), 17700–18820 and 18920–19700 MHz bands (18 GHz band), and 21200–23600 MHz band (23 GHz band). Several parties expressed general support for modifying the antenna standards on the basis that smaller antennas are cheaper to manufacture, install, and maintain. They also contend that smaller antennas allow existing towers to accommodate more antennas and allow installations at sites that would not otherwise be able to accommodate larger antennas. A number of parties argue that fixed service licensees can also reduce their deployment costs by using smaller antennas because tower space costs are often based significantly on the size and weight of the antenna being placed on the tower. AT&T and Engineers for Integrity of Broadcast Auxiliary Service Spectrum (EIBASS) expressed general opposition to allowing smaller antennas because permitting the use of smaller antennas, without technical restrictions, could produce harmful interference and decrease spectral efficiency.

4. The most extensive discussion offered by parties focused on allowing smaller antennas in the 6, 18, and 23 GHz bands. With respect to the 6 GHz band, Cielo and Sprint recommend that the minimum antenna size be reduced from six feet to four feet. While Comsearch originally also supported allowing four-foot antennas in the 6 GHz band, it later recommended that the Commission revise the antenna standards in § 101.115 for this band to allow for use of 3-foot antennas. For the 18 GHz band, Ceragon, Cielo, and Comsearch recommend that the minimum antenna size be reduced from two feet to one foot, while Sprint recommends a minimum diameter of 18 inches. In the 23 GHz band, commenters offered varying minimum antenna sizes. For example, Comsearch, Sprint, and Cielo proposed, respectively, that the Commission permit the use of antennas eight inches, six inches, and less than 1 foot in diameter. FWCC supports Comsearch's proposals.

5. With respect to the 6 GHz band, we seek comment on Comsearch's submitted antenna standards that would permit the use of 3-foot antennas. If such a change can be made without causing harmful interference to existing users, that change would maximize the benefits of allowing smaller antennas. For the 18 GHz band, we propose to adopt the standards Comsearch has offered to allow one-foot antennas. For the 23 GHz band, we propose to allow eight-inch antennas consistent with the standards proposed by Comsearch. We note that for each of those bands, we propose changes only to the standards for Category B antennas.

6. We ask that parties specifically discuss each standard in offering further comments on the proposed modifications. To the extent that commenters propose the use of alternative antenna sizes in the 6, 18, or 23 GHz bands, we ask that they specify the technical parameters (*i.e.,* maximum beamwidth, minimum antenna gain, and minimum radiation suppression) to allow for the use of those antennas. In particular, we seek comment on whether the proposed amendments would facilitate the efficient use of those bands by affording FS licensees the flexibility to install smaller antennas in those bands while appropriately protecting other users in the bands from interference.

7. We recognize that the proposed use of smaller, lower-gain antennas will result in more radiofrequency energy being transmitted in directions away from the actual point-to-point link and that the potential for interference is a concern for several parties. We therefore wish to ensure that any proposed changes to the Commission's rules appropriately protect other users in the bands from interference due to the operation of these smaller antennas. We seek comment on whether the use of smaller antennas pursuant to the proposed modifications will adversely affect other users in the specific bands by increasing the risk of interference. If so, do the potential benefits of using smaller antennas outweigh the potential risks of interference? We ask proponents of allowing smaller antennas to provide specific information quantifying how much money licensees could save in antenna, tower-siting, and deployment costs if the Commission authorized the use of smaller antennas as proposed in this *FNPRM.* Comments should be specific to a proposed antenna standard for a particular band.

8. We also seek comment on other ideas for changes to our antenna standards. Are additional options to mitigate interference needed if we modify the antenna standards in a specific band? For example, Comsearch suggested that the Commission could consider a power or EIRP tradeoff. Clearwire asks the Commission to examine its rules and consider changes to Category A (also known as Standard A) and Category B (also known as Standard B) to account for technology advancements and more sophisticated band sharing techniques and permit the deployment of different antenna geometries and smaller diameter antennas. Clearwire further urges the Commission to foster the development

of different antenna geometries in addition to developing radio pattern envelope (RPE) standards for smaller diameter antennas using current parabolic geometries. We seek comment on Clearwire's suggestion and on the advantages and disadvantages of other ideas for changes in our antenna standards.

Revising Efficiency Standards in Rural Areas

9. In the *NOI,* the Commission sought comment on whether relaxing the current efficiency standards in rural areas would benefit rural licensees without diminishing the availability of already increasingly scarce backhaul spectrum. Section 101.141(a)(3) of the Commission's rules, Fixed Service operators must establish minimum payload capacities (in terms of megabits per second) and minimum traffic loading payload (as a percentage of payload capacity) to promote efficient frequency use for various channel sizes in certain part 101 bands. Under the current rules, the requirements apply equally to stations in urban areas and to stations in rural areas. However, the Wireless Telecommunications Bureau has historically granted waivers to licensees in rural and remote areas where operation of microwave facilities at the required efficiency standards would cause financial hardship and to the extent that the underlying purpose of the rule would not be frustrated.

10. The Commission requested comment on whether lowering the current efficiency standards in rural areas would reduce the costs associated with wireless backhaul and thereby increase investment in broadband deployment. The Commission asked proponents of changing the standards to explain how changes would provide more flexibility and facilitate deployment of backhaul and other facilities in rural areas while still being consistent with the underlying purpose of § 101.141(a)(3), which is to promote efficient utilization of the spectrum. In addition, the Commission asked commenters to discuss the impact such changes would have on existing licensees, including licensees in other services that share spectrum with Fixed Services.

11. The Commission also sought comment on how to define ''rural'' under a revised rule that relaxes the efficiency standards in rural areas. The Commission noted that it had established a presumption to define ''rural areas'' as ''those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data.''

12. We find that in some instances, the lower traffic volume on rural networks and greater distances between microwave links may make it financially prohibitive to meet these minimum capacity requirements when conducting backhaul operations with wireless fixed links. We therefore propose to revise our application of the efficiency standards to reduce the cost of deploying microwave backhaul facilities and thereby spur deployment of broadband in rural areas. Sprint states that ''relaxed minimum payload capacities and minimum traffic loading payloads * * * [could] reduce the costs of deployment and [] allow for more microwave backhaul deployment in rural areas.'' Cielo Networks concurs, arguing that lowering the efficiency standards can ''lower deployment costs, which improves the businesses case for deploying microwave networks in typically underserved rural markets.'' Similarly, Aviat Networks supports the proposal to allow lower spectrum efficiency in rural areas because it ''will drive the roll out of broadband in rural areas.'' Relaxing efficiency standards could also substantially increase the possible path length, which could dramatically improve the business case for deploying microwave backhaul facilities in certain rural areas.

13. We are sensitive to the concerns of commenters that argue that lowering efficiency standards would result in less efficient use of spectrum and discourage innovation. In heavily congested areas, those concerns are valid, and we do not propose a general elimination of efficiency standards. In rural areas, however, relaxing efficiency standards could make microwave backhaul affordable by allowing operators to use longer links or reduce costs in other ways. Our goal is to facilitate the use of microwave in remote areas where microwave may be the only feasible means of providing backhaul.

14. Our proposal for modifying the efficiency standards rule is based on our antenna standards rule, which is well known to microwave licensees. Under that rule, a licensee is permitted to use antennas meeting performance Standard B if the environment is not congested with other licensees. Under our proposal, licensees would not be required to comply with the efficiency standards of § 101.141(a)(3) if the environment allows for the use of antennas meeting performance Standard B. By definition, there should be fewer concerns about congestion and availability of spectrum in those areas. In contrast, in the more congested areas where an antenna meeting performance Standard A is required, the licensee would be required to comply with the efficiency standards unless it made a detailed showing in its application that: (1) The efficiency standards prevent the deployment of the requested link for economic or technical reasons; (2) the applicant does not have any reasonable alternatives (*e.g.,* use of different frequency bands, use of fiber); and (3) relaxing the efficiency standards would result in tangible and specific public interest benefits. If a formerly non-congested area becomes congested such that use of a Standard A antenna is required, future applicants in that area would need to comply with the efficiency standards, absent a showing along the lines described above.

15. We seek comment on this proposed rule, as well as alternative ideas for providing relief from the efficiency standards in rural areas. We ask commenters to provide specific examples of instances in which relief from the efficiency standards could promote broadband deployment. We also seek comment on how much our proposal to modify the efficiency standards rule or any alternative ideas would reduce deployment costs. Are there benefits to our proposal or any alternative ideas beyond encouraging broadband deployment in rural areas and improving the business case for deploying microwave backhaul facilities in rural areas? Parties that oppose the idea should cite specific harms that they believe would result from changing the rule. We also seek comment on various means of implementing relief. Is it appropriate to base relief on the ability to use Category B antennas, or should the rule be based on another factor, such as the number of existing microwave links in a geographic area? If the rule is based on the number of links, how many links should be permitted and what is the appropriate geographic area for measuring the number of links? If relief is appropriate, should the Commission establish a new, lower efficiency requirement (*e.g.,* a percentage of § 101.141(a)(3)'s existing requirements) in addition to the § 101.141(a)(1) minimum bit rate requirement? In instances where an operator must use a Category A antenna, are the proposed standards for seeking relief from the efficiency standards appropriate, or should we adopt different or additional standards? Should relief from the efficiency standards be granted as a waiver requiring specific Commission action prior to operation, or should the Commission structure the relief in such

a manner as to allow conditional authority?

Allowing Wider Channels in 6 GHz and 11 GHz Bands

16. On May 14, 2010, FWCC filed a petition for rulemaking requesting that the Commission allow Fixed Service operators to combine adjacent 30 and 40 megahertz channels in the 5925–6425 MHz (Lower 6 GHz band) and 10700–11700 MHz band (11 GHz band) to increase the link capacity and simplify emerging backhaul operations. Currently, the maximum authorized channel bandwidths in the Lower 6 GHz band and 11 GHz band are 30 and 40 megahertz, respectively. FWCC contends that the current 30 and 40 megahertz channels have a ''practical maximum on a single polarization of about 180–200 Mb/s'' per channel, which is adequate for voice and low-speed data services (text and e-mails) but not for high-speed data (video and web browsing). FWCC anticipates that ''strong growth in mobile broadband * * * will soon push backhaul requirements * * * toward[s] 360/Mb/s per channel.'' Although FWCC acknowledges that it is possible to achieve the higher speeds by running separate signals on separate 30 or 40 MHz channels, it requires ''complex electronics to coordinate the transmissions, with the additional disadvantage of intermodulation products due to multiple RF signals sharing the same antenna.'' FWCC argues that by allowing Fixed Service operators to utilize 60 and 80 megahertz channels, it will simplify the electronics, lowers costs, improve reliability, eliminate intermodulation issues, and increase spectrum utilization.

17. NSMA states that the FWCC petition ''has merit and would benefit users'' but that the Commission should implement appropriate regulatory constraints to assure efficient use of the spectrum. Specifically, NSMA suggests that the Commission should consider: (1) ''requiring a showing of necessity and availability for applications planning use of more than one or two 60/80 MHz wide channels on any one path''; (2) designating certain slots as ''preferred'' slots for wider bandwidth channels (e.g., starting at one of the band edges, so all licensees would first attempt use of these channels on the same frequencies); (3) adjusting the minimum payload requirements to account for the higher capacity capabilities of the wider bandwidth channels; and (4) adopting methods to better assure high utilization with more tightly drawn regulations. FWCC concurs with NSMA's suggestions.

18. Conterra Ultra Broadband, LLC (Conterra) opposes the petition because of concern that increasing the channel bandwidth will further limit the overall availability of channels for use in the Lower 6 and 11 GHz bands as Fixed Service operators begin to license adjacent channels to create 60 and 80 megahertz ''super channels.'' Conterra argues that the ''initiative set forth in the FWCC's petition should not move forward unless there is a concurrent increase in available spectrum in these bands or a requirement to release unused allocations.'' FWCC replies that the availability of 60 and 80 megahertz channels will improve efficiency by putting into productive use the frequency space near adjacent channel edges, where signals must otherwise be attenuated.

19. We seek comment on FWCC's proposal to allow 60 megahertz channels in the Lower 6 GHz band and 80 megahertz channels in the 11 GHz band. The proposal has the potential to allow backhaul operators to handle more capacity and offer faster data rates. The record on this issue is quite limited, however, and we therefore seek additional information on this proposal.

20. Initially, we invite commenters to provide data on the anticipated demand for wider channels in these bands in different geographies. As the Commission has recently recognized, the Lower 6 GHz band is increasingly congested, and in some locations, it can be impossible to coordinate even a 30 megahertz link in that band. We seek comment on whether there are some areas, such as pockets of rural communities, where it is possible to use wider channels in the 6 and 11 GHz bands. Given the increasing use of these bands, to what extent can wider channels be accommodated? Would the primary benefit be in rural areas, or is there sufficient capacity to support use of wider channels in more urbanized areas?

21. In support of its proposal, FWCC claims that allowing wider channels would result in a number of benefits, including lower costs, improved reliability, elimination of intermodulation issues, and increased spectrum utilization? We ask supporters of the proposal to provide specific data corroborating and quantifying the cost savings and other benefits claimed by FWCC. We also seek comment on any conditions that should limit the ability to seek such wider channels, including the conditions proposed by NSMA. To what extent would NSMA's suggestions alleviate the concerns raised by Conterra? Would combining adjacent channels simplify emerging backhaul operations, and if so, by how much? We also seek comment on concerns that combining adjacent links would unnecessarily deplete the spectrum and possibly encourage speculative licensing by applicants seeking more spectrum than they need for their own operational purposes.

22. In addition, we seek comment on how the Commission should adjust the minimum payload requirements to account for the increased capacity that is available with wider bandwidth channels, should the Commission permit wider bandwidth channels. Given that the licensee will be utilizing twice as much spectrum, should the minimum payload requirements be doubled? Or should the Commission require an even greater increase in the payload requirements because combining the two channels would allow productive use of the frequency space in the middle of the now larger channel where the signal would otherwise have had to be attenuated if it were divided into two channels? Or should the Commission adopt an alternative approach? What are the potential advantages and disadvantages of adjusting the minimum payload requirements?

Geostationary Orbital Intersections

23. To protect receivers on geostationary satellites from the potential for interference from FS transmitters, § 101.145 of the Commission's rules requires a waiver filing for: (1) FS transmitters in the 2655–2690 MHz and 5925–7075 MHz bands with an antenna aimed within 2° of the geostationary arc; and (2) FS transmitters in the 12700–13250 MHz range with an antenna aimed within 1.5° of the geostationary arc. To be approved, a waiver request must show, among other things, that the transmitter EIRP is below listed limits. In contrast, Article 21 of the ITU Radio Regulations places the 2° restriction on the pointing azimuth of antennas of FS transmitters in the 1–10 GHz band only if the EIRP is greater than 35 dBW, and the 1.5° restriction on the azimuth of antennas in the 10–15 GHz band only if the EIRP is greater than 45 dBW.

24. Comsearch asks that the Commission amend § 101.145 of the Commission's rules to require a waiver filing for FS facilities pointing near the geostationary arc only if the EIRP is greater than the values listed in the ITU Radio Regulations. Comsearch contends that the requirement primarily protects satellites located over Europe, Africa, or the Atlantic or Pacific Oceans.

Comsearch believes that because the ITU has determined that FS transmitters with EIRPs below the values listed in Article 21 are unlikely to cause interference to geostationary satellites, amending the Commission's rules would improve the administrative efficiency of licensing FS links for backhaul without any corresponding harm.

25. We seek comment on amending § 101.145 of the Commission's rules to limit the circumstances under which FS transmitters must obtain a waiver in order to point near the geostationary arc. This action could facilitate microwave deployments by allowing affected licensees to deploy more quickly. The Commission's rules provide many applicants with conditional authority to begin service immediately, without waiting for final approval from the Commission, once they complete frequency coordination, with the stipulation that they must take their stations down if the Commission later rejects their applications. Conditional authority is not available, however, to applicants that must request waivers of existing rules. To the extent we can reduce the number of applicants that seek waivers, we can expedite deployment. Furthermore, the proposed change would harmonize our regulations with international regulations. It also appears that we can make a change without any increased risk of interference to satellite services. Under our proposal, we would require a waiver only if the EIRP is greater than 35 dBW for the 5925–7075 MHz band and is greater than 45 dBW in the 12700–13250 MHz band. Should the Commission adopt this or an alternative proposal? What are the potential advantages and disadvantages of adopting this or an alternative proposal?

Revising Definitions for Efficiency Standards

26. Currently, § 101.141(a)(3) of the Commission's rules lists a ''minimum payload capacity'' for various nominal channel bandwidths. The term ''payload capacity'' is not defined. According to Comsearch, data that is transmitted over a radio link includes both capacity that is available to carry traffic, as well as overhead generated by the radios such as coding and forward error correction information. Comsearch also states that IP radio systems use header compression techniques that result in repetitive overhead bits of data that are not transmitted over the radio link. As a result, the data rate at the Ethernet interfaces is higher than the rate at which data traverses the over-the-air radio path. In light of this difference, Comsearch argues that the payload capacity required by the rule should include the over-the-air capacity available for user traffic but exclude all overhead data. Accordingly, Comsearch asks the Commission to define ''payload capacity'' as ''the bit rate available for transmission of data over a radiocommunication system, excluding overhead data generated by the system.''

27. The same rule also defines ''typical utilization'' of the required payload capacity for each channel bandwidth as multiples of the number of voice circuits a channel can accommodate. Comsearch recommends revising § 101.141(a)(3) to de-emphasize these legacy voice-based TDM data rates and instead emphasize a consistent efficiency requirement in terms of bits-per-second-per-Hertz (''bps/Hz''). Comsearch argues that while these examples were typical when the rule was written, they are becoming outdated as systems support other interfaces such as Internet Protocol. In addition, Comsearch believes that the rule should be changed because the bandwidth efficiency requirements vary (from 2.46 to 4.47 bps/Hz) based on channel bandwidth rather than having a uniform requirement for all channel bandwidths. Comsearch asks the Commission to obtain input from equipment manufacturers and other interested parties to develop an appropriate efficiency rate in terms of bits-per-second-per-Hertz.

28. We seek comment on Comsearch's proposals. Is the suggested definition of payload capacity appropriate, or should we adopt an alternative definition or leave the term undefined? Are there alternative ways of resolving the problems Comsearch identifies? What are the advantages and disadvantages of defining payload capacity as Comsearch requests? We ask commenters to identify advantages and disadvantages to defining the efficiency requirement in terms of bits-per-second-per-hertz or in terms of some other metric. We seek input on an appropriate benchmark value for defining the efficiency requirement in terms of bits-per-second-per-hertz if we decide to define the efficiency requirement in terms of bits-per-second-per-hertz. Should the value be the same across all frequency bands? Related to our inquiry on efficiency standards in rural areas, should there be a different benchmark value in rural areas? We also seek comment on whether there is any need to consider how the definition should be applied to legacy systems. Is there a need for any grandfathering provisions for equipment that is currently installed or equipment that is currently on the market?

Procedural Matters

Ex Parte Rules—Permit-but-Disclose Proceeding

29. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Comment Period and Procedures

30. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of

Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Availability of Documents: The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, 1–800–378–3160.

Paperwork Reduction Analysis

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

Initial Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Further Notice of Proposed Rulemaking.* We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *FNRPM* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Backhaul FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

In this *Further Notice of Proposed Rulemaking,* we propose five additional changes to our rules involving microwave stations. These changes are described in further detail below. First, we propose to allow the use of smaller antennas in the 5925–6875 MHz band (6 GHz band), 17700–18300 and 19300–19700 MHz bands (18 GHz band), and 21200–23600 MHz band (23 GHz band) fixed service (FS) bands. Second, we propose to exempt microwave stations in non-congested areas from our capacity and loading requirements in order to facilitate the provision of service to rural areas. Third, we propose to widen the permissible maximum channel size in the 5925–6425 GHz Band (Lower 6 GHz Band) (to allow 60 megahertz channels) and in the 10700–11700 MHz band (11 GHz Band) (to allow 80 megahertz channels) to allow faster data rates. Fourth, we propose to revise the criteria under which microwave stations that are pointing in the direction of geostationary satellites must seek a waiver prior to operating to expedite service. Finally, we propose to add a definition of ''payload capacity'' to our rules, and seek comment on updating our capacity and loading requirements to reflect the increasing use of interfaces such as Internet Protocol.

With respect to the first proposal, § 101.115(b) of the Commission's rules establishes directional antenna standards designed to maximize the use of microwave spectrum while avoiding interference between operators. The rule on its face does not mandate a specific size of antenna. Rather, it specifies certain technical parameters—maximum beamwidth, minimum antenna gain, and minimum radiation suppression—that, depending on the state of technology at any point in time, directly affect the size of a compliant antenna. Smaller antennas have several advantages. They cost less to manufacture and distribute, are less expensive to install because they weigh less and need less structural support, and cost less to maintain because they are less subject to wind load and other destructive forces. In addition, the modest weight of small antennas makes them practical for installation at sites incapable of supporting large dishes, including many rooftops, electrical transmission towers, water towers, monopoles and other radio towers. Smaller antennas raise fewer aesthetic objections, thereby permitting easier compliance with local zoning and homeowner association rules and generating fewer objections. On the other hand, smaller antennas have increased potential to cause interference because smaller antennas result in more radiofrequency energy being transmitted in directions away from the actual point-to-point link. We seek comment on whether we can allow smaller antennas in the 6, 18 and 23 GHz bands without producing harmful interference.

Second, pursuant to § 101.141(a)(3) of the Commission's rules, Fixed Service operators must comply with minimum payload capacities (in terms of megabits per second) and minimum traffic loading payload (as a percentage of payload capacity) to promote efficient frequency use for various channel sizes in certain part 101 bands. Under the current rules, the requirements apply equally to stations in urban areas and to stations in rural areas. We seek comment on whether exempting stations in less congested areas from complying with the minimum payload capacity rule could allow licensees to establish longer links, resulting in cost savings and facilitating the use of wireless broadband and other critical services.

Third, we propose to allow the use of wider channels in the Lower 6 GHz

Band and 11 GHz Band. Specifically, we seek comment on allowing 60 megahertz channels in the Lower 6 GHz Band and 80 megahertz channels in the 11 GHz Band. The proposal has the potential to allow backhaul operators to handle more capacity and offer faster data rates.

Fourth, we seek comment on amending § 101.145 of the Commission's rules to limit the circumstances under which fixed service transmitters must obtain a waiver in order to point near the geostationary arc. Specifically, we propose to require a waiver only if the EIRP is greater than 35 dBW for the 5925–7075 MHz band and is greater than 45 dBW in the 12700–13250 MHz band. Limiting the circumstances where a waiver is necessary will be beneficial. Once the frequency coordination process is completed, the Commission's rules provide many applicants with conditional authority to begin service immediately, without waiting for final approval from the Commission, and with the stipulation that they must take their stations down if the Commission later rejects their applications. Conditional authority is not available, however, to applicants that must request waivers of existing rules. Accordingly, limiting the circumstances under which a waiver is needed will allow more applicants to rapidly commence service. Furthermore, we tentatively conclude that such a change would be consistent with international regulations and can be made without any increased risk of interference to satellite services.

Finally, we propose to add a definition of ''payload capacity'' to our rules, and seek comment on updating our capacity and loading standards to take into account the increasing use of interfaces such as Internet Protocol. Currently, § 101.141(a)(3) of the Commission's rules lists a ''minimum payload capacity'' for various nominal channel bandwidths. The same rule also defines ''typical utilization'' of the required payload capacity for each channel bandwidth as multiples of the number of voice circuits a channel can accommodate. These definitions are becoming outdated as systems support interfaces such as Internet Protocol. Accordingly, we propose to update our rules to add a definition of payload capacity. We also seek comment on revising our efficiency requirements to define those requirements in terms of bits-per-second-per-Hertz (''bps/Hz'') across all bands. Such changes could make our rules clearer and would be consistent with modern digital technologies.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333 and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88, 506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

Wireless Telecommunications Carriers (except satellite). The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers(except satellite) are small entities that may be affected by our proposed action.

Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 31,549 common carrier fixed licensees and 89,633 private and public safety operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

Satellite Telecommunications and All Other Telecommunications. Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual

receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

The second category, *i.e.* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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

This *FNPRM* proposes no new reporting or recordkeeping requirements.

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

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

The actions proposed in the *FNPRM* would provide additional options to all licensees, including small entity licensees. Such actions will serve the public interest by making additional spectrum available for fixed service users; will provide additional flexibility for broadcasters to use microwave spectrum; and will allow communications to be maintained during adverse propagation conditions. The rules will therefore open up beneficial economic opportunities to a variety of spectrum users, including small businesses. Because the actions proposed in the *FNPRM* will improve beneficial economic opportunities for all businesses, including small businesses, a detailed discussion of alternatives is not required.

Generally, the alternative approach would be to maintain the existing rules. With respect to the proposal to allow smaller antennas in the 6 GHz band, an alternative approach would be to establish technical criteria that would allow the use of 4-foot antennas, as opposed to the 3-foot antennas proposed. Such an approach would reduce the cost savings FS licensees could realize, including small licensees, but may reduce the potential for interference.

With respect to the proposal to relax efficiency standards in rural areas, an alternative would be to modify the requirement in non-congested areas as opposed to exempting non-congested areas from compliance. It is unclear whether such an approach would provide sufficient relief to FS licensees, including small businesses.

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

None.

Ordering Clauses

33. It is ordered, pursuant to sections 1, 2, 4(i), 7, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, that this *Further Notice of Proposed Rulemaking* is hereby adopted.

34. It is further ordered that notice is hereby given of the proposed regulatory changes described in this *Further Notice of Proposed Rulemaking,* and that comment is sought on these proposals.

35. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Amend § 101.3 by adding the definition ''Payload Capacity'' to read as follows:

§ 101.3 Definitions.

* * * * *

Payload Capacity. The bit rate available for transmission of data over a radiocommunication system, excluding overhead data generated by the system.

* * * * *

3. Amend § 101.109(c), in the table by revising the entries ''5,925 to 6,425'' and ''10,700 to 11,700'' to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency Band (MHz)	Maximum authorized bandwidth
* * * * *	
5,925 to 6,425	60 MHz.[1]
* * * * *	
10,700 to 11,700	80 MHz.[1]
* * * * *	

* * * * *

4. Amend § 101.115 by revising paragraph (b) introductory text and the entries ''5,925 to 6,425 [5], ''6,525 to 6,875 [5], ''6,875 to 7,075'''', ''17,700 to 18,820'', ''18,920 to 19,700 [10], and ''21,200 to 23,600 [7, 11] in the table in paragraph (b)(2) to read as follows:

§ 101.115 Directional antennas.

* * * * *

(b) Fixed stations (other than temporary fixed stations and DEMS nodal stations) operating at 932.5 MHz or higher must employ transmitting and receiving antennas (excluding second receiving antennas for operations such as space diversity) meeting the appropriate performance Standard A indicated below, except that in areas not subject to frequency congestion, antennas meeting performance Standard B may be used, subject to the requirements set forth in paragraph (d) of this section. For frequencies with a Standard B1 and a Standard B2, Standard B1 shall apply to stations authorized prior to [insert effective date of rule], and Standard B2 shall apply to stations authorized after [insert effective date of rule]. Licensees shall comply with the antenna standards table shown in this paragraph in the following manner:

* * * * *

(2) * * *

Frequency	Category	Maximum beam-width to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*	*	*	*		*		*		
5,925 to 6,425 [5]	A	2.2	38	25	29	33	36	42	55	*55*
	B1	2.2	38	21	25	29	32	35	39	*45*
	B2	4.1	32	15	20	23	28	29	60	*60*
*	*	*	*	*		*		*		
6,525 to 6,875 [5]	A	2.2	38	25	29	33	36	42	55	*55*
	B1	2.2	38	21	25	29	32	35	39	*45*
	B2	4.1	32	15	20	23	28	29	60	*60*
6,875 to 7,075	A	2.2	38	25	29	33	36	42	55	*55*
	B1	2.2	38	21	25	29	32	35	39	*45*
	B2	4.1	32	15	20	23	28	29	60	*60*
*	*	*	*	*		*		*		
17,700 to 18,820	A	2.2	38	25	29	33	36	42	55	*55*
	B1	2.2	38	20	24	28	32	35	36	*36*
	B2	3.3	33.5	18	22	29	31	35	57	*59*
18,920 to 19,700 [10]	A	2.2	38	25	29	33	36	42	55	*55*
	B1	2.2	38	20	24	28	32	35	36	*36*
	B2	3.3	33.5	18	22	29	31	35	57	*59*
21,200 to 23,600 [7, 11]	A	3.3	33.5	18	26	26	33	33	55	*55*
	B1	3.3	33.5	17	24	24	29	29	40	*50*
	B2	4.5	30.5	14	19	22	24	29	52	*52*
*	*	*	*	*		*		*		

5. Amend § 101.141 by revising paragraph (a)(3) to read as follows:

§ 101.141 Microwave modulation.

(a) * * *

(3) When use of an antenna meeting performance Standard A (see § 101.115) is required, the following capacity and loading requirements must be met for equipment applied for, authorized, and placed in service after June 1, 1997 in 3700–4200 MHz (4 GHz), 5925–6425, 6525–6875 MHz, and 6875–7125 MHz (6 GHz), 10,550–10,680 MHz (10 GHz), and 10,700–11700 MHz (11 GHz) bands, except during anomalous signal fading, unless a showing is made in the application that the capacity and loading requirements prevent the deployment of the requested link for economic or technical reasons; the applicant does not have any reasonable alternative; and not applying the capacity and loading requirements would result in tangible and specific public interest benefits. During anomalous signal fading, licensees subject to the capacity and loading requirements may adjust to a modulation specified in their authorization if such modulation is necessary to allow licensees to maintain communications, even if the modulation will not comply with the capacity and loading requirements specified in this paragraph. Links that must comply with the capacity and loading requirements that use equipment capable of adjusting modulation must be designed using generally accepted multipath fading and rain fading models to meet the specified capacity and loading requirements at least 99.95% of the time, in the aggregate of both directions in a two-way link.

* * * * *

6. Amend § 101.145 by revising paragraph (b) introductory text and paragraph (c) to read as follows:

§ 101.145 Interference to geo-stationary-satellites.

* * * * *

(b) *2655 to 2690 MHz and 5925 to 7075 MHz.* No directional transmitting antenna utilized by a fixed station operating in these bands with EIRP greater than 35 dBW may be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is

no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

* * * * *

(c) *12.7 to 13.25 GHz.* No directional transmitting antenna utilized by a fixed station operating in this band with EIRP greater than 45 dBW may be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction.

* * * * *

7. Amend § 101.147 by revising paragraph (i) introductory text, adding paragraph (i)(9), revising paragraph (o) introductory text, and adding paragraph (o)(8) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(i) *5,925 to 6,425 MHz.* 60 MHz authorized bandwidth.

* * * * *

(9) 60 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5964.97	6217.01
6024.27	6276.31
6083.57	6335.61
6142.87	6394.91

* * * * *

(o) *10,700 to 11,700 MHz.* 80 MHz authorized bandwidth.

(8) 80 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10745	11235
10825	11315
10905	11395
10985	11475
11065	11555
11145	11635

* * * * *

[FR Doc. 2011–23000 Filed 9–26–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 205, 208, 212, 213, 214, 215, 216, and 252

RIN 0750–AH11

Defense Federal Acquisition Regulation Supplement; Only One Offer (DFARS Case 2011–D013)

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: DoD is proposing to amend the Defense FAR Supplement (DFARS) to address acquisitions using competitive procedures in which only one offer is received. With some exceptions, the contracting officer must resolicit for an additional period of at least 30 days, if the solicitation allowed fewer than 30 days for receipt of proposals and only one offer is received. If a period of at least 30 days was allowed for receipt of proposals, the contracting officer must determine prices to be fair and reasonable through price or cost analysis or enter negotiations with the offeror.

DATES: The comment period for the proposed rule that published on July 25, 2011, at 76 FR 44293 is reopened. Interested parties should submit written comments to the address shown below on or before October 7, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D013, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2011–D013'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D013.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D013'' on your attached document.

- *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D013 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, *Attn:* Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** on July 25, 2011, at 76 FR 44293, with a request for comments on or before September 23, 2011. The comment period is being reopened through October 7, 2011, to provide an additional time for interested parties to review the proposed DFARS changes. Therefore, accordingly, the comment period for the proposed rule that published on July 25, 2011, at 76 FR 44293 is reopened.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–24783 Filed 9–26–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0078; MO 92210–0–0008 B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Tamaulipan Agapema, Sphingicampa blanchardi (No Common Name), and Ursia furtiva (No Common Name) as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the Tamaulipan agapema (*Agapema galbina*), *Sphingicampa blanchardi* (no common name), and *Ursia furtiva* (no common name) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that

listing any of these three southwestern moth species is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to these three species or their habitat at any time.

DATES: The finding announced in this document was made on September 27, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket No. [FWS–R2–ES–2011–0078].

Supporting documentation we used in preparing our finding for Tamaulipan agapema and *Sphingicampa blanchardi* is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMU–CC, 6300 Ocean Drive, #5837, Corpus Christi, TX 78412. Please submit any new information, materials, comments, or questions concerning this finding for Tamaulipan agapema and *S. blanchardi* to the Corpus Christi Ecological Services Field Office address.

Supporting documentation we used in preparing our finding for *Ursia furtiva* is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758. Please submit any new information, materials, comments, or questions concerning this finding for *U. furtiva* to the Austin Ecological Services Field Office address.

FOR FURTHER INFORMATION CONTACT: If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

For information regarding Tamaulipan agapema and *Sphingicampa blanchardi,* please contact Allan Strand, Field Supervisor, Corpus Christi Ecological Services Field Office (see **ADDRESSES**), by telephone at 361–994–9005; or by facsimile at 361–994–8262.

For information regarding *Ursia furtiva,* please contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES**), by telephone at 512–490–0057 extension 248; or by facsimile at 512–490–0974.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

On June 25, 2007, we received a petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that 475 species in the southwestern United States, including the Tamaulipan agapema, *Sphingicampa blanchardi,* and *U. furtiva,* be listed under the Act and critical habitat be designated. We acknowledged the receipt of the petition in a letter to the petitioner dated July 11, 2007. In that letter we also stated that the petition was under review by staff in our Southwest Regional Office.

We received a second petition, dated June 12, 2008, from WildEarth Guardians on June 18, 2008, requesting emergency listing of 32 species under the Act, including one of the three moths addressed above, Tamaulipan agapema. We provided a response to this petition on July 22, 2008, indicating that we had reviewed the information presented in the petition and the immediacy of possible threats. We determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also noted that we would continue to review these species through the petition process.

On March 19, 2008, WildEarth Guardians filed a complaint alleging that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on the June 18, 2007, petition to list 475 southwestern species. We subsequently published an initial 90-day finding for 270 of the 475 petitioned species on January 6, 2009 (74 FR 419), concluding that the petition did not present substantial information that listing of those 270 species may be warranted. This initial 90-day finding did not include the Tamaulipan agapema, *Sphingicampa blanchardi,* or *Ursia furtiva.* Subsequently, on March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement agreement, agreeing that the Service would submit to the **Federal Register** a finding as to whether their petition presented substantial information indicating that the petitioned action may be warranted for the remaining southwestern species by December 9, 2009. On December 4, 2009, we made a second 90-day finding for the remaining species, which included a determination that listing the Tamaulipan agapema, *S. blanchardi,* and *U. furtiva* may be warranted, and initiated a status review, which was published in the **Federal Register** on December 16, 2009 (74 FR 66866). This notice constitutes the 12-month finding on both petitions to list the Tamaulipan agapema, *S. blanchardi,* and *U. furtiva* as endangered or threatened.

Evaluation of the Status of Each of the Three Moth Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, we discuss below information pertaining to each species in relation to the five factors provided in section 4(a)(1) of the Act. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat

and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could negatively impact a species is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized moth experts and biologists.

For each of the three species, we provide a description of the species and its life-history and habitat, an evaluation of listing factors for that species, and our finding of whether the petitioned action is warranted or not for that species.

Species Information for Tamaulipan Agapema

Taxonomy and Species Description

The Tamaulipan agapema (*Agapema galbina*), a member of the silk moth family, Saturniidae, is one of seven currently recognized species in the *Agapema* genus. Moths of this genus are typically black, gray, brown, and white, and have eyespots on all four wings (Powell and Opler 2009, p. 240). Adult males' forewings are 0.9 to 1.1 inches (in) (25 to 30 millimeters (mm)) long, while females typically have 1.1 to 1.3 in (30 to 34 mm) long forewings (Tuskes *et al.* 1996, p. 171). In many cases, it is difficult to distinguish between the species based on morphological (body structure) differences (Tuskes *et al.* 1996, p. 171). However, the Tamaulipan agapema males have more white at the base of their forewing (the front wings on four-winged insects), which gives them a much lighter appearance than other species in the *Agapema* genus (Tuskes *et al.* 1996, p. 171). Another distinguishable feature of Tamualipan agapema is the males' antennae, which are shorter, slightly narrower, and lighter in color (almost yellow) than those of other *Agapema* species (Tuskes *et al.* 1996, p. 171). Also, compared to other species in the *Agapema* genus, minor differences in the male reproductive organs have been reported, but Tuskes *et al.* (1996, p. 171) did not note what those differences are.

Distribution and Status

Based on occurrence records from limited reports and survey efforts, the known distribution of the Tamaulipan agapema is from Cameron and Hidalgo Counties in the Lower Rio Grande Valley of south Texas to approximately 150 miles (241 kilometers) south into northern Tamaulipas, Mexico (Tuskes *et al.* 1996, p. 170). In Tamaulipas, Mexico, the Tamaulipan agapema was observed near Soto la Marina, about 150 miles (mi) (241 kilometers (km)) south of the United States border (Tuskes *et al.* 1996, p. 170). Unfortunately, there are no records of the species occurring in the intervening 150 mi (241 km) between Soto la Marina and its closest known record of occurrence in Cameron County, Texas.

We have no historic or current population estimates for this species. According to Tuskes *et al.* (1996, p. 170), this species was once fairly common, but ''has not been reported north of Mexico since the 1960s.'' Tuskes *et al.* (1996, p. 170) did not define the term ''fairly common,'' so we do not know what this means in a numerical or geographical context of population estimates. Tuskes *et al.* (1996, p. 170) also reported that attempts at searching for adults in areas that contain suitable habitat have been unsuccessful, but they did not give dates or the amount of survey effort that was involved. Wolfe (2010, pers. comm.) noted that when he visited a site west of Soto la Marina (in Mexico) in 1994 that there were ''hundreds of cocoons matted along the trunks'' of the host plant *Condalia hookeri* (brasil). Yet, when this site was visited again several years later, no cocoons were found (Wolfe 2010, pers. comm.). The information available does not allow us to assess whether the species is actually extirpated in the United States. We do not know if the limited survey efforts were thorough enough, conducted at the right time or in the right areas, or with enough frequency to actually document the species' occurrence. Failure to detect species when they are present is not uncommon in field surveys (Gu and Swihart 2004, p. 199). Failure to detect a species' presence in an occupied habitat patch is a common sampling problem when the population size is small, individuals are difficult to sample, or sampling effort is limited (Gu and Swihart 2004, p. 195). In the absence of information, we are unable to determine the species' current distribution and historic or current population estimates.

Habitat and Biology

As adults, Tamaulipan agapema are nocturnal, do not feed as they have nonfunctional mouth parts, have only one brood per year, and are relatively short-lived (Powell and Opler 2009, p. 236). These moths fly from September to November, during which time they breed and lay eggs on *Condalia hookeri* (brasil) (Peigler and Kendall 1993, p. 5; Tuskes *et al.* 1996, p. 171). Eggs hatch in December and January, and larvae feed on *C. hookeri* (Peigler and Kendall 1993, p. 12). In a review of the genus Agapema, Peigler and Kendall (1993, p. 5) cited Collins and Weast's 1961 book *Wild Silk Moths of the United States, Saturniinae,* to report that cocoons of the Tamaulipan agapema have been observed in masses on *Pithecellobium ebano* (ebony) trees in the Rio Grande Valley of south Texas. Peigler and Kendall (1993, pp. 5, 12) also state that the larvae move from the *C. hookeri* shrubs to *P. ebano* to make their cocoons on the trunks. However, the larvae make their cocoons on *C. hookeri* as well as *P. ebano.* Wolfe (2010, pers. comm.) noted that when he visited a site west of Soto la Marina, Mexico, about 150 mi (241 km) south of the United States border, that there were ''hundreds of cocoons matted along the trunks'' of the host plant *C. hookeri.* It seems that Tamaulipan agapema are associated with *C. hookeri* and *P. ebano* during the early stages of their life cycle.

Moths and butterflies are typically associated with host plants, and are often specifically linked to one or more plant species in order to complete their life cycle. As noted above, the known host plants of Tamualipan agapema are *Condalia hookeri* (brasil) and *Pithecellobium ebano* (ebony) trees (Peigler and Kendall 1993, p. 12). Both of these plants are part of the Tamaulipan thornscrub vegetative community. They are associated with the deep alluvial soils of the southern Rio Grande River, and are found in the Lower Rio Grande Valley of Texas and Tamaulipas, Mexico (NatureServe 2003, pp. 1–2). Both plants are prevalent in residential settings, because they are deliberately planted or started by bird droppings (Cobb 2011, pers. comm.).

Because the host plants are prevalent in residential settings, it may be possible for the Tamaulipan agapema to live in an urban environment. Peigler and Kendall (1993, p. 4) noted that adults of this species were often collected at night near artificial light

sources in the Brownsville area. However, we do not know if this species was residing on host plants transplanted into the residential area of Brownsville or if it was drawn to the artificial lights from a nearby native Tamaulipan thornscrub habitat.

Five-Factor Evaluation for the Tamaulipan Agapema

In making this finding, information pertaining to the Tamaulipan agapema in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

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

We evaluate historic threats in respect to current and future populations, because historic threats can be evidence of current or future threats if those activities, or effects of those activities, are still occurring in such a way that current or future populations are being significantly affected. We use the best available scientific and commercial information to make reasonable connections between the historic impacts and current or future declines of the species in order to determine whether the species is in danger of extinction now or in the foreseeable future. The mere identification of factors that could negatively impact a species is not sufficient to compel a finding that listing is warranted. We require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act. Potential factors that may affect the habitat or range of the Tamaulipan agapema are (1) Agricultural development, (2) urban development, and (3) climate change.

Agricultural Development

The loss of Tamaulipan thornscrub habitat has occurred historically within the Lower Rio Grande Valley of south Texas and northern Tamaulipas, Mexico. With the conversion of Tamaulipan thornscrub to agricultural field crops and urban areas, only about 5 percent of the native vegetation remained in the Lower Rio Grande Valley by the 1980s (Jahrsdoerfer and Leslie 1988, p. 1). Much of the habitat loss that has occurred has been attributed to agricultural development (Tremblay *et al.* 2005, p. 479). In the context of this finding, we consider agricultural development to be the conversion of native habitat to agricultural croplands. In Cameron County, Texas, Tremblay *et al.* (2005, p. 481) noted that approximately 75 percent of native habitat loss was due to agricultural development. Tremblay *et al.* (2005, p. 481) also noted that the extent of overall habitat loss had occurred by 1983. Subsequently, Jurado *et al.* (1999, p. 272) noted that over 90 percent of Tamaulipan thornscrub in northeastern Mexico has been cleared for agriculture or to create grasslands for cattle, but they did not give a date by when this loss had occurred. Where the conversion of native Tamaulipan thornscrub habitat to agricultural field crops has occurred, it has resulted in habitat loss for the Tamaulipan agapema because its host plants, *Condalia hookeri* (brasil) and *Pithecellobium ebano* (ebony), are no longer available. Tremblay *et al.* (2005, p. 481) noted that the extent of overall habitat loss had occurred by 1983 in Cameron County, Texas, and Jurado *et al.* (1999, p. 272) did not give a date by when habitat loss had occurred in northeastern Mexico. Because we have no information to indicate that additional conversion of native habitat to agricultural croplands has occurred since the 1980s, we have no evidence that it will happen in the foreseeable future.

While there may have been historical impacts to the Tamaulipan agapema from agricultural development due to its host plants being removed for crop fields, the magnitude of historic, current, or future threats from this activity is difficult to determine, because we have no historic or current population estimates with which to make a comparison, other than anecdotal reports. The information available does not allow us to assess the extent to which the Tamaulipan agapema occurred throughout the Tamaulipan thornscrub, or if the loss of habitat has caused a decline in population numbers. However, we have information to indicate that its host plants, which are associated with Tamaulipan thornscrub, have been lost to some extent. But, we have no information to indicate that additional conversion of native habitat to agricultural croplands has occurred since the 1980s, and we have no evidence that it will happen in the foreseeable future. Tremblay *et al.* (2005, p. 481) noted that the extent of overall habitat loss in Cameron County, Texas, had occurred by 1983, and Jurado *et al.* (1999, p. 272) did not give a date when overall habitat loss had occurred in northeastern Mexico. In the absence of information, we are unable to evaluate the historic loss of habitat with respect to current population numbers. Historic threats can be evidence of current or future threats if those activities, or effects of those activities, are still occurring in such a way that current or future populations will decline to the point of extinction. Because we lack sufficient information related to habitat loss and Tamaulipan agapema population numbers, we are not able to determine whether agricultural development may be a threat to the species. Therefore, based on the best available information, which does not indicate that habitat loss due to agricultural development is occurring now or likely to occur in the remaining areas of native habitat, we do not consider agricultural development to be a current or future threat to the Tamaulipan agapema.

Urban Development

As previously noted, urban development was identified as a cause for the loss of native Tamaulipan thornscrub in the Lower Rio Grande Valley (Jahrsdoerfer and Leslie 1988, p. 1). The human population in the Lower Rio Grande Valley of south Texas increased by 40 percent from 1990 to 2000, compared to an increase of 13 percent throughout the United States during the same period (Murdock *et al.* 2002, p. 34). Human population levels in the Lower Rio Grande Valley of Texas are projected to increase by between 130 and 181 percent from 2000 to 2040 (Murdock *et al.* 2002, pp. 40–43). As the human population grows, it is reasonable to expect a concurrent increase in urban development. Many areas where this species was once found in south Texas, such as the Esperanza Ranch near Brownsville, Texas, have been converted to residential subdivisions (Tuskes *et al.* 1996, p. 170).

However, there is an absence of information that allows us to make a reasonable connection between impacts of urban development and current or future declines of Tamaulipa agapema. Pockets of habitat may remain along roadways and on private land (Tuskes *et al.* 1996, p. 170). Also, the known host plants, *Condalia hookeri* (brasil) and *Pithecellobium ebano* (ebony) trees, are prevalent in residential settings, because they are intentionally planted or started by bird droppings (Cobb 2011, pers. comm.). Peigler and Kendall (1993, p. 4) noted that this species was often collected at night near artificial light sources, so it may be able to live in urban areas. But, we do not know whether or not the species may survive in urban areas. Because we lack sufficient information regarding this species' biology, we are unable to conclude whether residential areas can harbor adequate habitat patches. In the

absence of information that allows us to assess the impacts of urban development on current or future declines of Tamaulipan agapema, we have no evidence linking urban development with Tamaulipan agapema's population status.

Furthermore, most of the remaining woodland areas of the Lower Rio Grande Valley within the United States are managed by the Service's National Wildlife Refuge System and other resource agencies and organizations (Tremblay *et al.* 2005, pp. 481–482). During the period 1979–2009, the South Texas Refuge Complex, which consists of Santa Ana, Laguna Atascosa, and the Lower Rio Grande Valley National Wildlife Refuges, has acquired over 106,000 ac (42,896 ha) of land via fee title or conservation easements in the Lower Rio Grande Valley of Texas to create habitat corridors between pre-existing lands of Santa Ana and Laguna Atascosa National Wildlife Refuges (Service 2011, pp. 1–2). In addition to acquiring land, the South Texas Refuge Complex has replanted over 9,000 ac (3,642 ha) of agricultural land with over 2,750,000 native plant species, including the Tamaulipan agapema's host plants, *Condalia hookeri* (brasil) and *Pithecellobium ebano* (ebony). In Cameron and Hidalgo Counties alone, the South Texas Refuge Complex currently manages 140,661ac (56,923 ha) of native habitat (Sternberg 2011, pers. comm., p. 1), which is protected from urban development.

In summary, urban development may have resulted in some historic habitat loss for the Tamaulipan agapema, but there is no information that allows us to make a reasonable connection between impacts of urban development and current or future declines of the species. Urban development is expected to occur over the next 30 years in the Lower Rio Grande Valley of south Texas, but we have no information that it will occur in the remaining woodland areas of the Lower Rio Grande Valley within the United States or at a rate or magnitude that would result in population-level impacts. Because most of the remaining woodland areas of the Lower Rio Grande Valley within the United States are managed by the Service's National Wildlife Refuge System and other resource agencies and organizations (Tremblay *et al.* 2005, pp. 481–482), we expect that current and future urban development will occur on agricultural lands that have already been cleared of native vegetation. Also, this species' host plants are prevalent in residential settings and much of the remaining woodland areas managed by the Service's National Wildlife Refuge System. Therefore, in the absence of information that allows us to assess the impacts of urban development on current or future declines of Tamaulipan agapema, we concluded that urban development is not a threat to the Tamaulipan agapema now or in the foreseeable future.

Climate Change

Consideration of the effects of climate change is a component of our analyses of species under the Endangered Species Act. Here we provide a brief overview of the general topic of climate change as a way of providing a broad context for the more detailed consideration that follows with respect to the Tamaulipan agapema.

Described in general terms, ''climate'' refers to average weather conditions, as well as associated variability, over a long period of time (*e.g.* decades, centuries, or thousands of years). Climate variables most often described are temperature and precipitation, and the typical period for calculating the mean of these properties is 20 or 30 years. The term ''climate change'' thus refers to a change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties and that persists for an extended period—typically decades or longer. (See Intergovernmental Panel on Climate Change (IPCC), 2007a, pp. 30, 78, for technical definitions that are the basis for our description of these terms.)

Analyses of observed trends in climate demonstrate that climate change is occurring, as illustrated by examples such as an increase in the global mean surface air temperature (SAT) (''global warming''), substantial increases in precipitation in some regions of the world and decreases in other regions, and increases in tropical cyclone activity in some oceanic areas (IPCC 2007a, p. 30). Because relatively small but sustained changes in temperature can have substantial direct and indirect effects on natural processes and human populations, temperature is one of the most widely used indicators of climate change. Based on extensive analyses, the IPCC concluded that warming of the global climate system over the past several decades is ''unequivocal'' (IPCC 2007a, p. 2). These changes in global climate are affecting many natural systems (see IPCC 2007a, pp. 2–4, 30–33 for global and regional examples, and Global Climate Change Impacts in the United States (GCCIUS) 2009, pp. 27, 79–88, for examples in the United States).

Analyses of natural variability in climate conditions and the effects of human activities led the IPCC to conclude that most of the increase in global mean surface air temperature that has been observed since the mid-20th century is very likely due to the observed increase in greenhouse gas (GHG) concentrations related to human activities, particularly emissions of CO_2 from fossil fuel use (IPCC 2007a, p. 5 and Figure SPM.3). Extensive analyses point to continued changes in climate and considerable efforts are occurring to make projections of the magnitude, rate, and variability of future changes and to understand the mechanisms underlying them, including the role of greenhouse gases.

Projections by the IPCC in 2007 for climate change for the earth as a whole and for broad regions were based on simulations from more than 20 Atmospheric-Ocean General Circulation Models used in conjunction with various scenarios of different levels and timing of greenhouse gas emissions (Randall *et al.* 2007, pp. 596–599; Meehl *et al.* 2007, pp. 753–796; Christensen *et al.* 2007, pp. 847—917). The emissions scenarios were developed in the late 1990s and described in the Special Report on Emissions Scenarios (SRES) published in 2000 (Carter *et al.* 2007, p. 160 and references therein). The scenarios span a broad range of potential GHG emissions over the coming decades based on a wide spectrum of economic, technological, and human demographic possibilities for the planet; the SRES made no judgment as to which of the scenarios are more likely to occur, and although they cover a very broad range it is possible that emissions could be higher or lower than the range covered by the scenarios.

The IPCC's projections of change in global mean warming (global annual mean surface air temperature (SAT)) and how they differ over time across emissions scenarios as compared to the observed SAT from1980–1999, are described by Meehl *et al.* (2007, pp. 760–764). Several key points emerge from their projections. First, the projected changes in magnitude of warming are similar under all emissions scenarios to about 2030 and to some degree even to about mid-Century although more divergence is evident then, and the divergence continues to increase over time, i.e., in the near-term the projections differ by only 0.05° C (0.09° F), but by the last decade of the century the difference across scenarios is 1.6° C (0.9° F); as noted by Cox and Stephenson (2007, p. 208) total uncertainty in projected decadal mean

temperature is lowest 30 to 50 years in the future. Second, the magnitude of projected warming increases across each scenario including the lowest emission scenario, under which projected average change in SAT increases from 0.66 ° C (1.19° F) in the near term to 1.8° C (3.24° F) for the last decade of the century. Third, the pattern of projected increases is relatively consistent whether considering the average across all models for a given scenario or the projections from the individual models, including consideration of ± one standard deviation around the mean projection for each scenario (see Meehl *et al.* 2007, pp. 762–763, Figures 10.4 and 10.5, and Table 10.5). Thus although differences in projections reflect some uncertainty about the precise magnitude of warming, we conclude there is little uncertainty that warming will continue through the end of century, even under the lower emissions scenario. We note also that more recent analyses using additional global models and comparing other emissions scenarios have resulted in projections of global temperature change that are similar to those reported in 2007 by the IPCC (Prinn *et al.* 2011, pp. 527, 529).

While projections from global climate model simulations are informative, their resolution is coarse and it is helpful to have higher-resolution projections that are more relevant to the spatial scales used for various assessments involving climate change. Various methods to ''downscale'' climate information have been developed to generate projections that are more specific to regional or relatively local areas (see Glick *et al.* 2011, pp. 58–61 for a summary description of downscaling). In conducting status assessments of species, we use downscaled projections when they are the best scientific information available regarding future climate change.

However, we have no information for the local geographic area of south Texas or northern Mexico. While it appears reasonable to assume that climate change will occur within the range of the Tamaulipan agapema, we lack sufficient information to know specifically how climate change may affect the species or its habitat. We have not identified, nor are we aware of, any data on an appropriate scale to evaluate habitat or population trends for the species, or to make predictions on future trends and whether the species will actually be impacted. Therefore, we have no evidence to conclude that climate change is a threat to the Tamaulipan agapema now or in the foreseeable future.

Summary of Factor A

Based on the best available information, the Tamaulipan agapema's current and historical population size and distribution are unknown. Because we have no historic or current population estimates for the Tamaulipan agapema, we are unable to correlate land use impacts with current or future species' abundance. While the loss of Tamaulipan thrornscrub habitat has occurred historically, there is an absence of information that allows us to make a reasonable connection between the impacts of habitat loss and current or future declines of the species. We have no evidence that current or future urban development will result in detrimental impacts to the Tamaulipan agapema or its habitat. The information available does not allow us to assess the magnitude of impacts from urban development on the species, nor the extent of the occupied range. Also, we lack sufficient certainty to know specifically how climate change affects the species now or in the foreseeable future. Therefore, we conclude that the Tamaulipan agapema is not threatened by the destruction, modification, or curtailment of its habitat or range now or likely to become so.

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

There is no information suggesting that overutilization for commercial, recreational, scientific, or educational purposes pose a threat to the species. Therefore, we find that the Tamaulipan agapema is not threatened by overutilization now or likely to become so.

Factor C. Disease or Predation

The Tamaulipan agapema may be preyed upon by natural predators at various life stages. In 1961 in a suburb of Brownsville, Texas, large ants were observed preying upon Tamaulipan agapema cocoon masses in *Pithecellobium ebano* (ebony) trees (Peigler and Kendall 1993, p. 5). At that time, the impact of ants on populations of this moth was undetermined (Peigler and Kendall 1993, p. 5). While predation by ants may occur on Tamaulipan agapema cocoon masses, we have no information that the loss of cocoon masses presents a threat to the species. In fact, we have no information linking ant predation to Tamaulipan agapema population estimates.

Parasitic flies, such as *Euphorocera* sp. and *Lespesia* sp., have also been reported to prey on the Tamaulipan agapema (Peigler and Kendall 1993, p. 18). However, there is no information on the extent or level of impact that parasitic flies have had on the species.

In summary, although predation by ants and parasitic flies may be occurring, we have no information to indicate that they are occurring at levels that result in negative impacts to the species. Therefore, in the absence of evidence that predation or disease may constitute threats to the species, we conclude that the Tamaulipan agapema is not threatened by disease or predation now or likely to become so.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

We are not aware of any existing regulatory mechanisms that protect the Tamaulipan agapema or its habitat in the United States or Mexico. However, because we have not identified any threat to the species under the other four listing factors that would require regulatory protection, we do not find that the absence of regulatory mechanisms constitutes an independent threat to the species. Therefore, we find that the Tamaulipan agapema is not threatened by the inadequacy of existing regulatory mechanisms now or likely to become so.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Pesticide Use

We looked at pesticides as a potential factor that has an impact on the Tamaulipan agapema, due to the extent of agricultural croplands that occur within the range of the species. The Lower Rio Grande Valley of Texas is a major agriculture production area, with over 75 percent of its geographic area devoted to cropland (White *et al.* 1983, p. 331; Wainwright *et al.* 2001, p. 101). As in many agricultural areas, pesticides are commonly used on croplands, and have been found at relatively high levels in the Lower Rio Grande Valley (White *et al.* 1983, p. 325; Wainwright *et al.* 2001, p. 109). However, pesticides have not been linked to population declines of the Tamaulipan agapema. We have no information to indicate that the Tamaulipan agapema use croplands and are thus exposed to pesticides. Because we have no link between pesticide use and population abundance, we have no evidence that the Tamaulipan agapema is threatened by pesticide use now or likely to become so.

Small Population Size

Historical habitat loss due to agricultural development may have reduced the Tamaulipan agapema's

range to small, isolated patches of habitat. In many cases, small, isolated populations are subject to increased risk of extinction from stochastic (random) environmental, genetic, or demographic events (Brewer 1994, p. 616). Environmental changes, such as drought or severe storms, can have severe consequences if affected populations are small and clumped together (Brewer 1994, p. 616). Loss of genetic diversity can lead to inbreeding depression and an increased risk of extinction (Allendorf and Luikart 2007, pp. 338–343). Populations with small effective size show reductions in population growth rates, loss of genetic variability, and increases in extinction probabilities (Leberg 1990, p. 194; Jimenez *et al.* 1994, p. 272; Allendorf and Luikart 2007, pp. 338–339). Because the information available does not allow us to assess historic or current population estimates, nor the extent of the species' current range, we are not able to determine if the species' range has been reduced to small, isolated patches of habitat.

Additionally, there is no information to indicate that Tamaulipan agapema population numbers or population dynamics are vulnerable to the effects of small populations. We have no information to estimate historic or current population sizes for this species. We have no information on the number of individuals, population dynamics, or evidence of genetic structuring and inbreeding for the Tamaulipan agapema. Additionally, we do not currently have sufficient information on environmental or any other factors to know whether they affect the species to an extent that a threat exists. The information available does not allow us to assess the magnitude or immediacy of these impacts on the species. We have no information that allows us to make a reasonable connection between the impacts of stochastic (random) environmental, genetic, or demographic events and current or future declines of the Tamaulipan agapema. We have no evidence that Tamaulipan agapema is threatened by small population size now or likely to become so.

Summary of Factor E

In summary, based on the best available information, we have no evidence that natural or other manmade factors are likely to significantly threaten the existence of the Tamaulipan agapema. We have no information to indicate that the Tamaulipan agapema uses croplands and is exposed to pesticides. Also, we have no information on historic or current population sizes, so we are unable to determine if there may be inherent vulnerabilities of small populations and restricted geographic range. Therefore, we find that the Tamaulipan agapema is not threatened by natural or other manmade factors now or likely to become so.

Finding for the Tamaulipan Agapema

As required by the Act, we considered the five factors in assessing whether the Tamaulipan agapema is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Tamaulipan agapema. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized moth experts and State agencies. We evaluated historic threats with respect to current and future populations, and used the best available scientific and commercial information to make reasonable connections between the historic impacts and current or future declines of the species, in order determine whether the species is in danger of extinction now or in the foreseeable future. The mere identification of factors that could negatively impact a species is not sufficient to compel a finding that listing is appropriate. We require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

Based on the best available information, there may have been historical impacts to the Tamualipan agapema from agricultural development, which is the conversion of native Tamaulipan thornscrub habitat to cropland; but in the absence of information, we are unable to determine the magnitude of historic, current, or future threats from this activity. The small amount of information available is not sufficient to assess the extent to which the Tamaulipan agapema's range may have been reduced, or if the loss of habitat has caused a decline in population numbers. Also, we have no information to indicate that the conversion of native habitat is occurring now or in the foreseeable future. Historic habitat loss can be evidence of current or future threats if those activities, or effects of those activities, are still occurring in such a way that current or future populations will decline to the point of extinction. In the absence of information that allows us to make a reasonable connection between historic habitat loss and current or future declines of the species, we have determined that Tamaulipan agapema is not in danger of extinction now or in the foreseeable future due to agricultural development.

Urban development is expected to occur as human populations in Texas continue to increase, but we have no information that it will occur in the remaining woodland areas of the Lower Rio Grande Valley within the United States. Also, we do not have the information needed to assess whether climate change is a threat to this species. And, we have no evidence that overutilization, predation, disease, inadequacy of existing regulatory mechanisms, pesticide use, and small population size are threats to the species. In the absence of information that allows us to make a reasonable connection between the impacts of these activities and current or future declines of the Tamaulipan agapema, we conclude that this species is not in danger of extinction now or in the foreseeable future due to any of these factors.

Therefore, based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the potential threats are not of sufficient imminence, intensity, or magnitude to indicate that Tamaulipan agapema is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

Significant Portion of the Range

Having determined that Tamaulipan agapema is not in danger of extinction or likely to become so throughout its range, we must next consider whether there are any significant portions of the range where it is in danger of extinction or is likely to become endangered in the foreseeable future.

In determining whether Tamaulipan agapema is endangered or threatened in a significant portion of its range, we first addressed whether any portions of the range warrant further consideration. We evaluated the current range of Tamaulipan agapema to determine if there is any apparent geographic concentration of the primary stressors potentially affecting the species, such as habitat loss, climate change, predation, pesticide use, and small population size. However, we found the stressors are not of sufficient imminence, intensity, magnitude, or geographic concentration that would warrant evaluating whether a portion of the range is significant under the Act. We do not find that Tamaulipan agapema is in danger of extinction now, nor is it

likely to become endangered within the foreseeable future, throughout all or a significant portion of its range. Therefore, listing *Tamualipan agapema* as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Tamaulipan agapema to our Corpus Christi Ecological Services Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the species and encourage its conservation. If an emergency situation develops for Tamaulipan agapema, or any other species, we will act to provide immediate protection.

Species Information for *Sphingicampa blanchardi* (No Common Name)

Taxonomy and Species Description

Sphingicampa blanchardi is another silk moth that occurs in the family Saturniidae (Tuskes *et al.* 1996; p. 88). Three other *Sphingicampa* species occur sympatrically (they occupy the same or overlapping geographic areas, but do not interbreed) with *S. blanchardi. Sphingicampa blanchardi* is distinguished from these related species by its brown-to-light-yellow forewings with shades of pink (Tuskes *et al.* 1996, p. 89). *Sphingicampa blanchardi* males have 0.9 to 1.1 in (24 to 28 mm) long forewings, and females have 1.2 to 1.4 in (31 to 36 mm) long forewings (Tuskes *et al.* 1996, p. 89).

Distribution and Status

Sphingicampa blanchardi is known to occur in a few isolated localities in Cameron and Hidalgo Counties, Texas (Ferguson 1971, pp. 49–50; E. Riley 2010, pers. comm., pp. 1–2; Tuskes *et al.* 1996, p. 88). This moth is commonly found at the Audubon Palm Grove Sanctuary in Cameron County, Texas, and is also known from a few other localities along the United States and Mexico border in south Texas, such as the Santa Ana National Wildlife Refuge (Ferguson 1971, p. 50; E. Knudson 2010, pers. comm., p. 1). The range of the moth likely extends into Mexico; however, despite survey efforts, no occurrences have been documented in Mexico (Ferguson 1971, pp. 49–50). However, failure to detect species when they are present is not uncommon in field surveys (Gu and Swihart 2004, p. 199).

Although this moth has been reported to be commonly found at the Audubon Palm Grove Sanctuary, Cameron County, Texas (Ferguson 1971, p. 50; E. Knudson 2010, pers. comm., p. 1), we have no historic or current population estimates for this species. In the absence of information, we are unable to determine the species' current distribution and historic or current population estimates.

Habitat and Biology

Little is known regarding the habitat and biology of *Sphingicampa blanchardi,* and the majority of this information can be found in the book titled *Wild Silk Moths of North America,* by Tuskes *et al.* (1996, pp. 88–90). Within this book, it is noted that adults are associated with *Pithecellobium ebano* (ebony) woodland communities, and larvae raised in captivity are known to feed on several legume trees (trees that produce seed pods) associated with *P. ebano* woodlands, such as *Acacia farnesiana* (huisache), *Leucaena pulverulenta* (tepeguiaje), and *Pithecellobium flexicaule* (ebony) (Tuskes *et al.* 1996; p. 88). As noted above for Tamaulipan agapema, moths are typically associated with host plants, and are often specifically linked to one or more plant species in order to complete their life cycle. However, we do not know if *S. blanchardi* are like other moth species that are often specifically linked to one or more plant species.

Five-Factor Evaluation for *Sphingicampa blanchardi*

In making this finding, information pertaining to the *Sphingicampa blanchardi* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

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

We evaluate historic threats in respect to current and future populations, because historic threats can be evidence of current or future threats if those activities, or effects of those activities, are still occurring in such a way that current or future populations are being significantly affected. We use the best available scientific and commercial information to make reasonable connections between the historic impacts and current or future declines of the species in order to determine whether the species is in danger of extinction now or in the foreseeable future. The mere identification of factors that could negatively impact a species is not sufficient to compel a finding that listing is appropriate. We require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act. Potential factors that may affect the habitat or range of the *S. blanchardi* are discussed in this section, including: (1) Agricultural development, (2) urban development, and (3) climate change.

Agricultural Development

The loss of Tamaulipan thornscrub habitat has occurred historically within the Lower Rio Grande Valley of south Texas and northern Tamaulipas, Mexico. With the conversion of Tamaulipan thornscrub to agricultural field crops and urban areas, it has only about 5 percent of the native vegetation remaining in the Lower Rio Grande Valley by the 1980s (Jahrsdoerfer and Leslie 1988, p. 1). Much of the habitat loss that has occurred has been attributed to agricultural development (Tremblay *et al.* 2005, p. 479). In the context of this finding, we consider agricultural development to be the conversion of native habitat to agricultural croplands. In Cameron County, Texas, Tremblay *et al.* (2005, p. 481) noted that approximately 75 percent of native habitat loss was due to agricultural development. Tremblay *et al.* (2005, p. 481) also noted that the extent of overall habitat loss had occurred by 1983. Subsequently, Jurado *et al.* (1999, p. 272) noted that over 90 percent of Tamaulipan thornscrub in northeastern Mexico has been cleared for agriculture or to create grasslands for cattle, but they did not give a date by when this loss had occurred. Where the conversion of native Tamaulipan thornscrub habitat to agricultural field crops has occurred, it is reasonable to assume that habitat loss for the *Sphingicampa blanchardi* has occurred because the native plant species are no longer available. However, we have no information to indicate that additional conversion of native habitat to agricultural croplands has occurred since the 1980s, and we have no evidence that it will happen in the foreseeable future.

While there may have been historical impacts to the *Sphingicampa blanchardi* from agricultural development, the magnitude of historic, current, or future threats from this activity is difficult to determine, because we have no historic or current population estimates with which to make a comparison. The information available does not allow us to assess the extent to which the *S. blanchardi* occurred throughout the Tamaulipan thornscrub, or if the loss of habitat has caused a decline in population numbers. Also, we have no information to indicate that additional conversion of native habitat to agricultural croplands

has occurred since the 1980s, and we have no evidence that it will happen in the foreseeable future. Tremblay *et al.* (2005, p. 481) noted that the extent of overall habitat loss had occurred by 1983 in Cameron County, Texas, and Jurado *et al.* (1999, p. 272) did not give a date by when habitat loss had occurred in northeastern Mexico. In the absence of information, we are unable to evaluate the historic loss of habitat with respect to current population numbers. Historic threats can be evidence of current or future threats if those activities, or effects of those activities, are still occurring in such a way that current or future populations will decline to the point of extinction. Because we lack sufficient information related to habitat loss and *S. blanchardi* population numbers, we are not able to determine whether habitat loss due to agricultural development may be a threat to the species. Therefore, based on the best available information, the loss of Tamaulipan thornscrub due to agricultural development does not seem to have caused a decline in *S. blanchardi* to the point of extinction. Although we lack the information to determine historic or current population estimates, this moth has been reported to be commonly found at certain localities, such as the Audubon Palm Grove Sanctuary (Ferguson 1971, p. 50; E. Knudson 2010, pers. comm., p. 1). Therefore, we do not consider agricultural development to be a current or future threat to *S. blanchardi.*

Urban Development

As previously noted for Tamualipan agapema above, urban development was identified as a cause for the loss of Tamaulipan thornscrub in the Lower Rio Grande Valley (Jahrsdoerfer and Leslie 1988, p. 1). The human population in the Lower Rio Grande Valley of south Texas increased by 40 percent from 1990 to 2000, compared to an increase of 13 percent throughout the United States during the same period (Murdock *et al.* 2002, p. 34). Human population levels in the Lower Rio Grande Valley of Texas are projected to increase by between 130 and 181 percent from 2000 to 2040 (Murdock *et al.* 2002, pp. 40–43). As the human population grows, it is reasonable to expect a concurrent increase in urban development. As noted for the for Tamualipan agapema, many areas in the Lower Rio Grande Valley of south Texas where similar species of moths once were found have been converted to residential subdivisions (Tuskes *et al.* 1996, p. 170). However, there is no information demonstrating a reasonable connection between impacts of urban development and current or future declines of *Sphingicampa blanchardi.* Pockets of habitat may remain along roadways and on private land (Tuskes *et al.* 1996, p. 170). But, we do not know whether or not the species may survive in these pockets of habitat within urban areas. Because we lack sufficient information regarding the species' biology, we are unable to conclude whether urban areas can harbor adequate habitat patches. In the absence of information that allows us to assess the impacts of urban development on current or future declines of *S. blanchardi,* we have no evidence linking urban development with the species' population status.

Furthermore, most of the remaining woodland areas of the Lower Rio Grande Valley within the United States are managed by the Service's National Wildlife Refuge System and other resource agencies and organizations (Tremblay *et al.* 2005, pp. 481–482). The South Texas Refuge Complex—which consists of Santa Ana, Laguna Atascosa, and the Lower Rio Grande Valley National Wildlife Refuges—during the period 1979–2009, has acquired over 106,000 ac (42,896 ha) of land via fee title or conservation easements in the Lower Rio Grande Valley of Texas to create habitat corridors between pre-existing lands of Santa Ana and Laguna Atascosa National Wildlife Refuges (Service 2011, pp. 1–2). In addition to acquiring land, the South Texas Refuge Complex has replanted over 9,000 ac (3,642 ha) of agricultural land with over 2,750,000 native Tamaulipan thornscrub plant species. In Cameron and Hidalgo Counties alone, the South Texas Refuge Complex currently manages 140,661 ac (56,923 ha) of native habitat (Sternberg 2011, pers. comm., p. 1), which is protected from urban development.

In summary, urban development may have resulted in some historic habitat loss for the *Sphingicampa blanchardi,* but there is no information that allows us to make a reasonable connection between impacts of urban development and current or future declines of the species. Urban development is expected to occur over the next 30 years in the Lower Rio Grande Valley of south Texas, but we have no information that it will occur in the remaining woodland areas or at a rate or magnitude that would result in population level impacts. Because most of the remaining woodland areas of the Lower Rio Grande Valley within the United States are managed by the Service's National Wildlife Refuge System and other resource agencies and organizations (Tremblay *et al.* 2005, pp. 481–482), we expect that current and future urban development will occur on agricultural lands that have already been cleared of native vegetation. Therefore, in the absence of information that allows us to assess the impacts of urban development on current or future declines of *S. blanchardi,* we concluded that urban development is not a threat to the *S. blanchardi* now or likely to become so.

Climate Change

For a more detailed description of how we consider the effects of climate change as a component of our analyses of species under the Act, please see *Factor A,* Climate Change, above under the Tamaulipan agapema. In regards to the *Sphingicampa blanchardi,* we have no information for the local geographic area of south Texas or northern Mexico. While it appears reasonable to assume that climate change will occur within the range of the *Sphingicampa blanchardi,* we lack sufficient information to know specifically how climate change may affect the species. We have not identified, nor are we aware of, any data on an appropriate scale to evaluate habitat or population trends for the species, or to make predictions on future trends and whether the species will actually be impacted. Therefore, we have no evidence to conclude that climate change is a threat to the *S. blanchardi* now or likely to become so.

Summary of Factor A

Based on the best available information, the *Sphingicampa blanchardi*'s current and historical population size and distribution are unknown. Because we have no historic or current population estimates for *S. blanchardi,* we are unable to correlate land use impacts with current or future species abundance, and, therefore, are unable to determine if those impacts would cause the species to decline to the point of extinction. While the loss of native Tamaulipan thornscrub has occurred historically, there is an absence of information that allows us to make a reasonable connection between the impacts of habitat loss and current or future declines of the species. We have no evidence that current or future urban development will result in detrimental impacts to *S. blanchardi* or its habitat. The information available does not allow us to assess the magnitude of impacts from urban development on the species, nor the extent of the occupied range. Also, we lack sufficient certainty to know specifically how climate change affects the species now or in the foreseeable future. Therefore, we conclude that the

Tamaulipan agapema is not threatened by destruction, modification, or curtailment of its habitat or range now or likely to become so.

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

There is no information suggesting that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to the species. Therefore, we find that the *Sphingicampa blanchardi* is not threatened by overutilization now or likely ot become so.

Factor C. Disease or Predation

We have no information to indicate that the *Sphingicampa blanchardi* is subject to disease or predation. Therefore, we find that *S. blanchardi* is not threatened by disease or predation now or likely to become so.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

We are not aware of any existing regulatory mechanisms that protect *Sphingicampa blanchardi* or its habitat in the United States or Mexico. However, because we have not identified any threat to the species under the other four listing factors requiring regulatory protection, we do not find that the absence of regulatory mechanisms constitutes an independent threat to the species. Therefore, we find that the *S. blanchardi* is not threatened by the inadequacy of existing regulations now or likely to become so.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Pesticide Use

We looked at pesticides as a potential factor that has an impact on the *Sphingicampa blanchardi* due to the extent of agricultural croplands that occur within the range of the species. The Lower Rio Grande Valley of Texas is a major agriculture production area (White *et al.* 1983, p. 331; Wainwright *et al.* 2001, p. 101), and pesticides have been found at relatively high levels in this area (White *et al.* 1983, p. 325; Wainwright *et al.* 2001, p. 109). However, we are not aware of any *S. blanchardi* mortalities that have resulted from the use of pesticides, or any information linking pesticides to population declines of the *S. blanchardi.* We have no information that *S. blanchardi* use croplands and are thus exposed to pesticides. Because we have no link between pesticide use and population abundance, we have no evidence that the *S. blanchardi* is threatened by pesticide use now or likely to beome so.

Small Population Size

The historical loss of Tamaulipan thornscrub habitat due to agricultural development may have reduced the *Sphingicampa blanchardi's* range to small, isolated patches of habitat, but we have no information on where or how many may occur. In many cases, small, isolated populations are subject to increased risk of extinction from stochastic (random) environmental, genetic, or demographic events (Brewer 1994, p. 616). Environmental changes, such as drought or severe storms, can have severe consequences if affected populations are small and clumped together (Brewer 1994, p. 616). Loss of genetic diversity can lead to inbreeding depression and an increased risk of extinction (Allendorf and Luikart 2007, pp. 338–343). Populations with small effective size show reductions in population growth rates, loss of genetic variability, and increases in extinction probabilities (Leberg 1990, p. 194; Jimenez *et al.* 1994, p. 272; Allendorf and Luikart 2007, pp. 338–339). Because the information available does not allow us to assess historic or current population estimates, nor the extent of the species' current range, we are not able to determine the extent if the species' range has been reduced to small, isolated patches of habitat.

Additionally, there is no information to indicate that *Sphingicampa blanchardi* population numbers or population dynamics are vulnerable to the effects of small populations. We have no information to estimate historic or current population sizes for this species. We have no information on the number of individuals, population dynamics, or evidence of genetic structuring and inbreeding for the *S. blanchardi.* Additionally, we do not currently have sufficient information on environmental or any other factors to know whether they affect the species to an extent that a threat exists. The information available does not allow us to assess the magnitude or immediacy of these impacts on the species. In summary, we have no information that allows us to make a reasonable connection between the impacts of stochastic (random) environmental, genetic, or demographic events and current or future declines of the *S. blanchardi.* Therefore, we conclude that *S. blanchardi* is not threatened by small population size now or likely to become so.

Summary of Factor E

In summary, based on the best available information, we have no evidence that natural or other manmade factors are likely to significantly threaten the existence of the *Sphingicampa blanchardi.* We have no information to indicate that the *S. blanchardi* uses croplands and is exposed to pesticides. Also, we no information on historic or current population sizes, so we are unable to determine if there may be inherent vulnerabilities of small populations and restricted geographic range. Therefore, we find that the *S. blanchardi* is not threatened as a result of natural or other manmade factors now or likely to become so.

Finding for the *Sphingicampa blanchardi*

As required by the Act, we considered the five factors in assessing whether the *Sphingicampa blanchardi* is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the *S. blanchardi.* We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized moth experts and State agencies. We evaluated historic threats in respect to current and future populations, and used the best available scientific and commercial information to make reasonable connections between the historic impacts and current or future declines of the species in order to determine whether the species is in danger of extinction now or in the foreseeable future. The mere identification of factors that could negatively impact a species is not sufficient to compel a finding that listing is appropriate. We require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

Based on the best available information, there may have been historic habitat impacts to the *Sphingicampa blanchardi* from agricultural development, but in the absence of information on historic or current species range or abundance, we are unable to determine the magnitude of historic, current, or future threats from this activity. The small amount of information available is not sufficient to assess the extent to which the *S. blanchardi's* range may have been reduced, or if the loss of native

Tamaulipan thornscrub has caused a decline in population numbers. Also, we have no evidence that the native Tamaulipan thornscrub is being converted to agricultural crop fields now or in the foreseeable future. In the absence of information that allows us to make a reasonable connection between historic agricultural conversion of native Tamaulipan thornscrub to crop fields and current or future declines of the species, we have determined that *S. blanchardi* is not in danger of extinction now or in the foreseeable future due to agricultural development.

Urban development is expected to occur as human populations in Texas continue to increase, but we have no information that it will occur within the remaining woodland areas of the Lower Rio Grande Valley. Also, we do not have the information needed to assess whether climate change is a threat to this species. And, we have no evidence that overutilization, predation, disease, inadequacy of existing regulatory mechanisms, pesticide use, and small population size are threats to the species. In the absence of information that allows us to make a reasonable connection between the impacts of these activities and current or future declines of the *S. blanchardi,* we conclude that this species is not in danger of extinction now or in the foreseeable future due to any of these factors.

Therefore, based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the potential threats are not of sufficient imminence, intensity, or magnitude to indicate that *Sphingicampa blanchardi* is in danger of extinction (endangered), or likely to become endangered, within the foreseeable future (threatened) throughout all of its range.

Significant Portion of the Range

Having determined that *Sphingicampa blanchardi* is not in danger of extinction or likely to become so throughout its range, we must next consider whether there are any significant portions of the range where it is in danger of extinction or is likely to become endangered in the foreseeable future.

In determining whether *Sphingicampa blanchardi* is endangered or threatened in a significant portion of its range, we first addressed whether any portions of the range warrant further consideration. We evaluated the current range of *S. blanchardi* to determine if there is any apparent geographic concentration of the primary stressors potentially affecting the species, such as habitat loss, climate change, pesticide use, and small population size. However, we found the stressors are not of sufficient imminence, intensity, magnitude, or geographic concentration that would warrant evaluating whether a portion of the range is significant under the Act. We do not find that *S. blanchardi* is in danger of extinction now, nor is it likely to become endangered within the foreseeable future, throughout all or a significant portion of its range. Therefore, listing *S. blanchardi* as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the *Sphingicampa blanchardi* to our Corpus Christi Ecological Services Field Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the species and encourage its conservation. If an emergency situation develops for *S. blanchardi,* or any other species, we will act to provide immediate protection.

Species Information for *Ursia furtiva* (No Common Name)

Taxonomy and Species Description

The genus of moths, *Ursia,* was originally described in 1911 by Barnes and McDunnough (1911, pp. 160–161) as belonging to the family Notodontidae. The species *Ursia furtiva* (no common name) was not described until 1971, and was based on a single male specimen collected in the Big Bend National Park, Texas (Blanchard 1971, pp. 303–305).

Distribution

Even though there are anecdotal reports of *Ursia furtiva* occurring in San Antonio, Bexar County, Texas, and Lufkin, Angelina County, Texas (*http://www.butterfliesandmoths.org/species/Ursia-furtiva*), we are aware of only one confirmed specimen, which was collected in the Big Bend National Park, Texas (Blanchard 1971, pp. 303–305). Because reports of the species' occurrence outside Big Bend National Park have not been confirmed, we are not accepting those reports as records of occurrence. Therefore, we acknowledge only the single documented specimen from the Chisos Mountains of Big Bend National Park, Texas (Blanchard 1971, pp. 303–305). Thus, the distribution of a species cannot be described based on a single specimen. Therefore, we are not able to determine the distribution of *Ursia furtiva.*

Habitat and Biology

We have no information about the habitat or biology of *Ursia furtiva.* Because we lack any information on the species, we cannot reach conclusions about the biology or the habitat needs of the species.

Five-Factor Evaluation for *Ursia furtiva*

In making this finding, information pertaining to the *Ursia furtiva* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

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

The description of *Ursia furtiva* is based on a single male specimen collected in the Big Bend National Park, Texas (Blanchard 1971, pp. 303–305). Because we have no information about the species, its habitat, and current or historic distributions or population levels, we conclude that the species is not threatened by the destruction, modification, or curtailment of its habitat or range now or likely to become so.

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

We acknowledge that only the single documented specimen is from Big Bend National Park, Texas (Blanchard 1971, pp. 303–305). Therefore, any commercial, recreational, scientific, or educational collection activities would require a permit by the National Park Service (36 CFR 2.5). Because of this regulation and the lack of information suggesting that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to the species, we find that the *Ursia furtiva* is not threatened by overutilization now or likely to become so.

Factor C. Disease or Predation

We have no information to indicate that the *Ursia furtiva* is subject to disease or predation. We have not encountered any information that indicates the contrary; however, in the absence of evidence that this may constitute a threat to the species, we conclude that the *U. furtiva* is not threatened by disease or predation now or likely to become so.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

We have no information to indicate that the *Ursia furtiva* may be affected by the inadequacy of existing regulatory mechanisms. As noted above under *Factor B* and according to Title 32 Section 2.5 in the Code of Federal

Regulations, any commercial, recreational, scientific, or educational collection activities, including the collection of *Ursia furtiva,* would require a permit by the National Park Service. Also, we have not identified any threat to the species under the other four listing factors requiring regulatory protection. Consequently, we do not find that the lack of regulatory mechanisms, other than the National Park Service's permit requirement, constitutes an independent threat to the species. We conclude that the *U. furtiva* is not threatened by the inadequacy of existing regulatory mechanisms now or likely to become so.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

For a more detailed description of how we consider the effects of climate change as a component of our analyses of species under the Act, please see *Factor A,* Climate Change, above under the Tamaulipan agapema. While it appears reasonable to assume that climate change will occur within Big Bend National Park where the only specimen of *Ursia furtiva* has been documented, we lack sufficient information to know specifically how climate change will affect the species. In addition, since we have no information of the habitat required by this species, we cannot make any predictions about the effects of climate change on the habitat. We have not identified, nor are we aware of, any data on an appropriate scale to evaluate habitat or population trends for the species, or to make predictions on future trends and whether the species will actually be impacted. Therefore, based on the best available information, we conclude that *U. furtiva* is not threatened by climate change now or likely to become so.

Finding for the *Ursia furtiva*

As required by the Act, we considered the five factors in assessing whether the *Ursia furtiva* is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the *U. furtiva.* We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized moth experts and State agencies.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we found no information to indicate that there are threats to the species or its habitat, from any of the five factors. This species is known from only one documented specimen. Therefore, we lack data about *Ursia furtiva's* habitat, current or historical distributions, and susceptibility to threats. Based on the very Limited information about this species, we have determined that *U. furtiva* is not in danger of extinction or likely to become so.

Significant Portion of the Range

Having determined that *Ursia furtiva* is not in danger of extiontion or likely to become so throughout its range, we must next consider whether there are any significant portions of the range where the species is in danger of extinction or is likely to become endangered in the foreseeable future. Because the species is known from only one documented specimen, we lack information about *U. furtiva's* habitat, current or historical distributions, and susceptibility to threats. There is nothing to suggest that threats are disproportionately acting on any portion of the species' range such that the species is at risk of extinction now or in the foreseeable future. Therefore, we find that listing the *U. furtiva* as an endangered or threatened species is not warranted throughout all or a significant portion of its range.

Conclusion of 12-Month Finding

We find the Tamaulipan agapema, *Sphingicampa blanchardi,* and *Ursia furtiva* are not in danger of extinction now, nor is any of these three species likely to become so throughout all or a significant portion of its range. Therefore, listing any of these three species as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Taumalipan agapema or *Sphingicampa blanchardi* to our Corpus Christi Ecological Services Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the species and encourage its conservation. If an emergency situation develops for either the Taumalipan agapema, *S. blanchardi,* or any other species, we will act to provide immediate protection.

Also, we request that you submit any new information concerning the status of, or threats to, *Ursia furtiva* to our Austin Ecological Services Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor *U. furtiva* and encourage its conservation. If an emergency situation develops for *U. furtiva,* or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Austin and Corpus Christi Ecological Services Field Offices (see **ADDRESSES**).

Author

The primary author of this notice is a staff member of the Southwest Regional Office.

Authority: The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 7, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–24528 Filed 9–26–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110908575–1573–01]

RIN 0648–BB27

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2012 Specifications and Management Measures and Secretarial Amendment 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action would establish the 2012 harvest specifications and management measures for certain groundfish species taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This action includes regulations to implement Secretarial Amendment 1 to the PCGFMP. Secretarial Amendment 1 contains the rebuilding plans for overfished species and new reference points for assessed flatfish species.

DATES: Comments must be received no later than 5 p.m., local time on November 8, 2011.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0207, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Fax:* 206–526–6736, *Attn:* Sarah Williams.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, *Attn:* Sarah Williams.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

National Marine Fisheries Service (NMFS) will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Information relevant to this proposed rule, which includes a final environmental impact statement (FEIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) is available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Pacific Fishery Management Council (Council).

FOR FURTHER INFORMATION CONTACT: Sarah Williams, *phone:* 206–526–4646, *fax:* 206–526–6736, or *e-mail: sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the **Federal Register** Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm* and at the Council's Web site at *http://www.pcouncil.org.*

Background

Every other year, the Pacific Fishery Management Council (Council) makes recommendations to set biennial allowable harvest levels for Pacific Coast groundfish, and recommends management measures for commercial and recreational fisheries that are designed to achieve those harvest levels. For the 2011–2012 biennium, the Council recommended Amendment 16–5 to the PCGFMP and proposed specifications and management measures. Amendment 16–5 included one new and seven revised rebuilding plans, and new reference points for assessed flatfish species. A Draft Environmental Impact Statement (DEIS) was published in August 2010 that analyzed the effects of Amendment 16–5 and the 2011–2012 groundfish harvest specifications and management measures. During the comment period on the DEIS NMFS reviewed the DEIS and the comments and concluded that the analysis did not clearly explain the alternatives in such a way that NMFS could choose among them. Therefore the Amendment was disapproved on December 23, 2010.

Because management measures were needed, NMFS published a final rule establishing harvest specifications and management measures for most species (75 FR 27508, May 11, 2011), pursuant to NFMS' emergency authority under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1301 *et seq.* Accordingly, the provisions are effective for a maximum of 366 days. For more detail, see the ''Comments and Responses'' section of the final rule, 76 FR 27509. The provisions implemented pursuant to emergency authority included the rebuilding plans and corresponding harvest levels, new proxy reference points for assessed flatfish species, and the Overfishing Limits (OFLs), Acceptable Biological Catches (ABCs), and Annual Catch Limits (ACLs) for assessed flatfish based on the new reference points.

This action proposes to implement specifications and management measures previously in place through the emergency rules discussed above. The specifics associated with the development and decision making processes for this action can be found in the proposed rule (75 FR 67810, November 3, 2010) and final rule (75 FR 27508, May 11, 2011.

Regulations Implemented Through Secretarial Authority and Secretarial FMP Amendment 1

Under MSA section 304(a) (16 U.S.C. 1854(c)), when the Secretary of Commerce (the Secretary) disapproves of a Council's FMP amendment, the Council may resubmit a revised amendment. If the Council does not submit a revised amendment, the Secretary, acting through NMFS, is authorized to prepare an amendment, 16 U.S.C. 1854(c)(1).

NMFS disapproved of the Council's FMP amendment, and in June 2011, the Council decided not to resubmit a revised amendment. NMFS therefore proposes to implement Secretarial Amendment 1 to the FMP pursuant to section 304(c) of the MSA.

Secretarial Amendment 1 is a revised version of Amendment 16–5. While a Secretarial Amendment is rare, the substance of this Amendment is routine and implements provisions through notice and comment rulemaking that were previously created by emergency action. Specifically, this action proposes to update the regulations at 50 CFR part 660 to establish new and revised rebuilding plans, establish the 2012 harvest specifications consistent with those rebuilding plans and new flatfish proxies, and calculate the resulting shorebased trawl allocations.

Secretarial Amendment 1 also proposes to make some non-substantive structural changes to the PCGFMP by moving the descriptions of rebuilding plans and associated text to an appendix. The appendix could be updated without requiring an FMP amendment, following notice and comment provisions as described in the FMP. This change would ensure that the rebuilding plans are easily accessible to the Council, agency, and members of the public. Currently, the PCGFMP allows the updating of rebuilding parameters, such as the target year to rebuild, through regulatory amendments rather than FMP amendments. However, the exact provisions of the rebuilding plans are frequently difficult to locate because they are imbedded in the rule's text and in the main body of the FMP. By moving text to an appendix, Secretarial Amendment 1 would not change any substantive rebuilding policies or procedures described in the PCGFMP. Rather, it would enhance the public's access to current rebuilding plans; if a rebuilding parameter or other element of a rebuilding plan changes through the biennial harvest specifications and management process, the appendix would be updated after the final rule is in place without a separate FMP amendment.

Regulations Implemented Through Routine Rulemaking

In addition to the regulations proposed to implement Secretarial Amendment 1, this action proposes two regulatory changes. First, this rule proposes to correct the 2012 limited

entry fixed gear sablefish tier limits. On May 18, 2011, NMFS was notified by the Executive Director of the Council that there was a mistake in the calculation of the 2011 and 2012 sablefish cumulative limits during the development of the 2011–2012 biennial specifications and management measures. The Executive Director requested that NMFS correct the sablefish cumulative limits for the limited entry fixed gear primary fishery as quickly as possible, because the 2011 primary fishery season opened on April 1, and some vessels are actively fishing on their cumulative limits. A previous rule corrected the limits for 2011 (76 FR 34910, June 15, 2011), but no correction was made for 2012. These limits were incorrect in the 2011–2012 final rule, and therefore this rule proposes to correct these limits for 2012.

The limits proposed in this rule are consistent with the analysis in the FEIS on the 2011–2012 Harvest Specifications and Management Measures and the intent of the previously published regulations because the tier limits corrected through this rule are the result of a minor calculation change and do not reflect a policy or management shift in regards to season structure, opening or closing dates of the fishery or any other management measure.

Second, this rule proposes to update the lingcod regulations and allocation tables for the Trawl Individual Quota (TIQ) program at § 660.140, because of a new geographical split for lingcod. Lingcod is one of the Individual Fishing Quota (IFQ) species that is allocated through the TIQ program. NMFS initially issued Quota Share (QS) and Quota Pounds (QP) for lingcod on a coastwide basis. For the 2011–2012 harvest specifications, the lingcod OFLs, ABCs and ACLs were split at 42° N. lat; however, the trawl rationalization regulations were not conformed to the split. Therefore, this rule proposes to conform the trawl rationalization regulations to the split at 42° N. lat.

Current regulations at 660.140(c)(3)(vii)(A)(*1*) state that, following initial QS allocation, if a species has a new geographical subdivision QS holders will be issued an amount of QS ''for each newly created area that is equivalent to the amount they held for the area before it was subdivided.'' Consistent with this provision, this rule proposes to update the list of IFQ species, the shorebased trawl allocations, the shorebased IFQ accumulation limits, update the shorebased IFQ vessel accumulation limits, the IFQ management areas, the Pacific Coast treaty Indian fisheries allocations and harvest guidelines, and Table 2d (At-Sea whiting fishery annual set asides).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Secretarial Amendment 1, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

A DEIS and FEIS were prepared for the 2011–2012 groundfish harvest specifications and management measures, which this action would implement in part. The DEIS includes an RIR and an IRFA; the FEIS includes a FRFA. The Environmental Protection Agency published a notice of availability for the final EIS associated with this action on March 11, 2011 (76 FR 13401). A copy of the DEIS and/or FEIS is available online at *http://www.pcouncil.org/.*

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this rule, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble. For the 2011–2012 biennium, NMFS published a final rule that established harvest specifications and management measures for most species (75 FR 27508, May 11, 2011). The IRFA and the FRFA associated with the May 11, 2011 rule making (and with the DEIS and FEIS) describe the economic impacts of the measures being proposed in this rule. The discussion below, except for the update on recent trends in the shorebased trawl fishery, repeats the FRFA discussion found in the preamble of the May 11, 2011 rule. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The following summary is based on analyses discussed in Chapter 4 of the FEIS and in the May 2011 FRFA.

NMFS considered five alternatives to the proposed action. A no action alternative, the Council's final preferred alternative, and three alternatives which were discussed as a ''low'', ''intermediate'' and ''high'' options for overfished species ACLs. The No Action alternative would have retained the status quo in the fishery prior to NMFS' implementing the emergency rules. The Council's preferred alternative, Alternative 3, was a mixture of ''high'' and ''intermediate'' ACLs for overfished species. It is discussed in detail below. NMFS' preferred alternative was a slightly modified version of the Council's preferred alternative and only varied in the ACL values for two overfished species. The low, intermediate, and high alternatives varied only in their ACLs for overfished species. After adjusting each alternative to have the same level of whiting harvests, there are no differences between the Council's FPA and the NMFS preferred alternative in terms of ex-vessel revenues and recreational trips.

The overall economic impact of NMFS' preferred alternative is that many sectors are expected to achieve social and economic benefits similar to those under the current regulations, or the No Action alternative. For both 2011 and 2012, the combined total annual ex-vessel revenues associated with the NMFS preferred alternative including at-sea whiting, is expected to be about $90 million, compared with the No-Action level of $82 million. (Note that ex-vessel revenues are just one indicator of the commercial value of the fishery. For example, they understate the wholesale, export, and retail revenues earned from the fishery. Data on these other indicators is either incomplete or unavailable.)

On a coastwide basis, excluding at-sea whiting, commercial ex-vessel revenues for the non-tribal and tribal groundfish sectors are estimated to be approximately $70 million per year under NMFS' preferred alternative, compared with approximately $68 million under No Action; and the number of recreational bottom fish trips is estimated to be 646,000 under NMFS' preferred alternative compared with 609,000 under No Action. However, there are differences in the distribution of ex-vessel revenue and angler trips on a regional basis and on a sector-by-sector basis. These changes are driven by changes in the forecast abundance for target species and overfished species. The significant changes to major commercial target species are associated with Pacific whiting, Dover sole, petrale sole and sablefish. Compared to the No-Action Alternative, Pacific whiting harvests are expected to increase by 50 percent and Dover sole by 25 percent, while sablefish harvests are expected to decrease by 10 percent and petrale sole harvests by 23 percent. With the exception of the Pacific whiting and nearshore open access sectors, all other non-tribal commercial fisheries sectors are expected to receive lower levels of

ex-vessel revenues than under No Action. The limited entry fixed gear sector shows the greatest projected decline (−10 percent) in revenue as a result of the sablefish ACL decrease. The Pacific whiting fishery at-sea sector (including tribal) revenues are expected to increase by 51 percent and the shoreside whiting trawl (excluding tribal) revenues are expected to increase by 33 percent. Ex-vessel revenues in both the non-whiting trawl (excluding tribal) and the tribal shoreside fisheries (trawl and fixed, including whiting) are expected to decrease by about 2 percent.

A variety of time/area closures applicable to commercial vessels have been implemented in recent years. The most extensive of these are the Rockfish Conservation Areas (RCAs), which have been in place since 2002 to prohibit vessels from fishing in depths where overfished groundfish species are more abundant. Different RCA configurations apply to the limited entry trawl sector and the limited entry fixed gear and open access sectors. In addition, the depth ranges covered can vary by latitudinal zone and time period. The alternatives vary somewhat in terms of the extent of RCAs. In addition to the RCAs, two Cowcod Conservation Areas (CCAs) have been in place since 1999 in the Southern California Bight to reduce bycatch of the overfished cowcod stock, and yelloweye conservation areas have been established off the Washington Coast to reduce bycatch of the overfished yelloweye rockfish stock. The NMFS preferred alternative for the limited entry non-whiting trawl fleet generates slightly lower ex-vessel revenue on a coastwide basis when compared to revenues under the current regulations or No Action alternative. This difference is primarily driven by a decrease in the abundance of sablefish and petrale sole as opposed to changes in status of constraining species. Area-based management for the limited entry non-whiting trawl fleet under the NMFS preferred alternative will be comparable to what was in place in 2009 and 2010—the area north of Cape Alava, Washington and shoreward of the trawl RCA will remain closed in order to protect overfished rockfish species. Given the decreased amount of fishable area in northern Washington since 2009, fishery participants are expected to continue to experience higher costs due to increases in fuel required to travel to and fish at those deeper depths would remain.

The fixed gear sablefish sector will generate lower revenue under NMFS' preferred alternative than No Action because the sablefish ACL has decreased. However, the fixed gear fleet will have somewhat more area available for fishing than under No Action, because fishing will be open at depths deeper than 100 fm (183 m) north of 40°10′ north latitude, whereas under No Action, depths between 100 fm (183 m) and 125 fm (229 m) will only open on days when the Pacific halibut fishery is open. Fixed gear fisheries south of 36° N. latitude will see sablefish harvest close to status quo levels. There are no recommended changes to area management relative to status quo.

Under NMFS' preferred alternative, the nearshore groundfish fishery is expected to have a moderate increase in ex-vessel revenues compared with No Action due to increased targeting opportunities for black rockfish (between 42° N. latitude and 40°10′ N. latitude) and cabezon south (South of 42° N. latitude). Fishing areas open to the nearshore fleets will be roughly the same as under No Action. Fishing opportunity and economic impacts to the nearshore groundfish sector are largely driven by the need to protect canary and especially yelloweye rockfish.

Excluding whiting, the NMFS preferred alternative is projected to decrease ex-vessel revenues by 3%, thereby providing the west coast economy with slightly lower ex-vessel revenues than was generated by the fishery under No Action. However, effects on buyers and processors along the coast will vary depending location. In addition, NMFS' preferred alternative attempts to take into account the desire expressed by buyers and processors to have a year-round groundfish fishery. Individual quota management for trawl fisheries should help accommodate this preference; however, in practice, in the absence of trip limits it is somewhat uncertain how trawl landings will be distributed in time and space.

In terms of recreational angler effort, the number of angler trips under NMFS' preferred alternative is slightly higher compared to No Action, but somewhat less than in 2009. However, an increase in angler effort under NMFS' preferred alternative occurs primarily in south and central California, while northern Washington shows a slight increase and Oregon shows no change compared with No Action. It is expected that under the proposed 2011–2012 management measures, tribal groundfish fisheries will generate less revenue and personal income than under No Action due to a reduction in sablefish harvest.

The 2011–2012 period will be the first groundfish management cycle in which the shoreside trawl sector fisheries will be conducted under the Amendment 20 trawl rationalization program, including issuance and tracking of individual fishing quotas (IFQ) for most trawl-caught groundfish species. IFQ management is designed to provide opportunities for fisherman and processors to maximize the value of their fishery by creating incentives to make the optimum use of available target and bycatch species. Since all trawl trips will be observed, catch of constraining overfished species will be monitored in real time, and individuals will be held directly responsible for ''covering'' all catch of groundfish species with IFQ. Since using IFQ to constrain catch of overfished species represents a real cost in terms of money and/or fishing opportunity, NMFS expects that fishers will take special care to avoid unnecessary catch of these species.

At the same time there is uncertainty about how individuals will be able to manage the individual risk inherent in a system based on personal responsibility. This issue may present a considerable challenge, especially to small businesses that have access to only a single limited entry trawl permit. Exhausting all readily available supplies of IFQ for a particularly constraining species such as yelloweye may result in the business being effectively shut down for the remainder of the season. Partly for this reason it is expected that over time the number of vessels and permits engaging in the limited entry trawl fishery will decline as fishers strive to consolidate available IFQ onto a smaller number of vessels in order to reduce the costs of harvesting the quotas. A smaller number of active vessels will mean reductions in the number of crew hired and in expenditures made in local ports for materials, equipment, supplies and vessel maintenance. As such, while wages and profits for those crew and vessel owners that do remain in the fishery should increase, the amount and distribution of ex-vessel revenues and community income will change in ways that are not yet foreseeable, but probably to the detriment of some businesses and communities currently involved in the groundfish trawl fishery.

Due to these types of countervailing uncertainties, impacts on trawl fisheries under the 2011–2012 management measures used in this analysis were estimated using a model designed to project overfished species bycatch levels under a status quo cumulative trip limit management regime. Likewise, the model used to estimate community income impacts was calibrated based on recently estimated spending patterns for regional vessels and processors. While providing a useful starting point for comparing gross-level effects under the

alternatives, the true range of economic impacts achievable under the rationalized, IFQ-managed fishery may reflect a considerable departure from these estimates.

The above discussion indicates that there were uncertainties in the economic modeling because of the implementation of the IFQ program. In comparing 2011 to 2010 through June of each year: Effort in terms of number of trips has decreased by 50 percent; or in terms of vessels has decreased by 30 percent. Average catch per vessel has remained constant; however, average revenue per vessel has increased 27 percent. Total landings have decreased by 30 percent and total revenues have decreased by 10 percent. The fish are being processed by fewer buyers—the number of buyers has fallen from 41 to 25 while the number of ports where fish are processed has fallen from 18 to 15. Average ex-vessel price has increased from $0.49/lb to $0.62/lb. One of the major reasons for the increase in prices is related to sablefish. Trawl sablefish ex-vessel prices for January–June 2011 prices are up to an average of $2.41/lb. versus $1.83/lb. last year based on simple averages by port, for Jan–June. These estimates are preliminary and it is not clear if these trends will be maintained as the fishery moves into the summer and fall fisheries.

The IRFA analysis includes a discussion of small businesses. This rule will regulate businesses that harvest groundfish. According to the Small Business Administration, a small commercial harvesting business is one that has annual receipts under $4 million, and a small charter boat business is one that has annual receipts under $7 million. The IRFA estimates that implementation of NMFS preferred alternative will affect about 2,600 small entities. These small entities are those that are directly regulated by this proposed rule that is being promulgated to support implementation of NMFS' preferred alternative. These entities are associated with those vessels that either target groundfish or harvest groundfish as bycatch. Consequently, these are the vessels, other than catcher-processors, that participate in the limited entry portion of the fishery, the open access fishery, the charter boat fleet, and the tribal fleets. Catcher/processors also operate in the Alaska pollock fishery, and all are associated with larger companies such as Trident and American Seafoods. Therefore, it is assumed that all catcher/processors are ''large'' entities.

Best estimates of the limited entry groundfish fleet are taken from the NMFS Limited Entry Permits Office. As of June 2010, there are 399 limited entry permits, including 177 endorsed for trawl (172 trawl only, 4 trawl and longline, and 1 trawl and trap-pot); 199 endorsed for longline (191 longline only, 4 longline and trap-pot, and 4 trawl and longline); and 32 endorsed for trap-pot (27 trap-pot only, 4 longline and trap-pot, and 1 trawl and trap-pot). Of the longline and trap-pot permits, 164 are sablefish endorsed. Of these endorsements 130 are ''stacked'' (*e.g.* more than one permit registered to a single vessel) on 50 vessels. Ten of the limited entry trawl endorsed permits are used or owned by catcher/processor companies associated with the whiting fishery. The remaining 389 entities are assumed to be small businesses based on a review of sector revenues and average revenues per entity. The open access or nearshore fleet, depending on the year and level of participation, is estimated to be about 1,300 to 1,600 vessels. Again, these are assumed to be ''small entities.'' The tribal fleet includes about 53 vessels, and the charter boat fleet includes 525 vessels that are also assumed to be ''small entities.''

NMFS' preferred alternative represents efforts to address the directions provided by the Ninth Circuit Court of Appeals, which emphasizes the need to rebuild stocks in as short a time as possible, taking into account: (1) The status and biology of the stocks; (2) the needs of fishing communities; and (3) interactions of depleted stocks within the marine ecosystem. By taking into account the ''needs of fishing communities,'' NMFS simultaneously takes into account the ''needs of small businesses,'' as fishing communities rely on small businesses as a source of economic activity and income. The FEIS and RIR/IRFA include analysis of a range of alternatives that were considered by the Council, including analysis of the effects of setting allowable harvest levels necessary to rebuild the seven groundfish species that were previously declared overfished. An eighth species, petrale sole, was declared overfished in 2010 and this action includes a new rebuilding plan for this species along with the ACLs and management measures consistent with the adopted rebuilding plan. Associated rebuilding analyses for all eight species estimate the time to rebuild under various levels of harvest.

The Council initially considered a wider range of alternatives, but ultimately rejected from further analysis alternatives allowing harvest levels higher than what is generally consistent with current policies for rebuilding overfished stocks and a ''no fishing'' scenario (F=0). Section 2.4 of the FEIS describes six integrated alternatives including No Action, the Council's FPA, the NMFS preferred alternative, and three other alternatives (including the Council's Preliminary Preferred Alternative, which is similar to the Council's FPA). NMFS finds that the F=0 and Alternatives 1A, 1B, and 2, while resulting in shorter rebuilding times for most of the overfished species, lead to projected major decreases in commercial revenues and recreational activity. Allowing too many communities to suffer commercial or recreational losses greater than 10 percent fails to take into account the needs of fishing communities. Alternative 3, the Council FPA, and NMFS' preferred alternative all reduce the impacts to communities to less than 10 percent, but they differ in their impacts on rebuilding times.

Alternative 3 reduces rebuilding times from status quo for many of the overfished species, but does not reduce the rebuilding time for yelloweye rockfish, and results in only minor reductions for cowcod and darkblotched and rockfish. The Council's FPA improves upon Alternative 3 by reducing the rebuilding time for darkblotched rockfish by two years while maintaining Alternative 3's small positive increases in commercial revenues and recreational activity. The NMFS preferred alternative improves over the Council FPA by further reducing the rebuilding times of cowcod and yelloweye by three years and ten years, respectively. Comparison of the action alternatives with the No Action alternative allows an evaluation of the economic implications to groundfish sectors, ports, and fishing communities; and the interaction of depleted species within the marine ecosystem of reducing ACLs for overfished species to rebuild stocks faster than they would under the rebuilding strategies that NMFS adopted and has modified consistent with new, scientific information on the status and biology of these stocks.

Alternative 2011–2012 groundfish management measures are designed to provide opportunities to harvest healthy target species within the constraints of alternative ACLs for overfished species. The integrated alternatives allow estimation of target species catch under the suite of ACLs for overfished species both to demonstrate if target species ACLs are projected to be exceeded, and to estimate related socioeconomic impacts.

The Council reviewed these analyses and read and heard testimony from

Council advisors, fishing industry representatives, representatives from non-governmental organizations, and the general public before deciding the Council's FPA in June 2010. The Council's final preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species decided by the Council at their April and June 2010 meetings. NMFS reviewed these analyses, read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, the general public, and considered legal obligations to comply with a court order (*NRDC* v. *Locke*) before deciding NMFS' preferred alternative in February 2011. The NMFS preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species that were part of the NMFS preferred alternative.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish from 1991–2005, and has only occasionally exceeded the reinitiation trigger of 11,000 fish. From 2005–2010 the average Chinook bycatch was 4,130 fish, well below the average from 1991–2005. The Chinook ESUs most likely affected by the whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery.

For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles.

After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.''

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: September 20, 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 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

2. Revise § 660.40 to read as follows:

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial ACLs, specifically the target date for rebuilding the stock to its MSY level

and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a ''Spawning Potential Ratio'' or ''SPR'' harvest rate.

(a) *Bocaccio.* Bocaccio south of 40°10′ N. latitude was declared overfished in 1999. The target year for rebuilding the bocaccio stock south of 40°10′ N. latitude to B_{MSY} is 2022. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* Canary rockfish was declared overfished in 2000. The target year for rebuilding the canary rockfish stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* Cowcod was declared overfished in 2000. The target year for rebuilding the cowcod stock south of 40°10′ N. latitude to B_{MSY} is 2068. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.7 percent.

(d) *Darkblotched rockfish.* Darkblotched rockfish was declared overfished in 2000. The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2025. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 64.9 percent.

(e) *Pacific Ocean Perch (POP).* POP was declared overfished in 1999. The target year for rebuilding the POP stock to B_{MSY} is 2020. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Petrale Sole.* Petrale sole was declared overfished in 2010. The target year for rebuilding the petrale sole stock to B_{MSY} is 2016. The harvest control rule is the 25–5 default adjustment, which corresponds to an annual SPR harvest rate of 32.4 percent in 2012.

(g) *Widow rockfish.* Widow rockfish was declared overfished in 2001. The target year for rebuilding the widow rockfish stock to B_{MSY} is 2010. The harvest control rule is a constant catch of 600 mt, which corresponds to an annual SPR harvest rate of 91.3 percent in 2012.

(h) *Yelloweye rockfish.* Yelloweye rockfish was declared overfished in 2002. The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2074. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 76.0 percent.

3. Revise § 660.50(f)(3) to read as follows:

* * * * *

(f) * * *

(1) * * *

(2) * * *

(3) Lingcod taken in the treaty fisheries are subject to an overall expected total lingcod catch of 250 mt, which is attributable to the stock north of 42° N. latitude.

4. Tables 2a, 2b, and 2d to Part 660, Subpart C are amended to read as follows:

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Table 2a. To Part 660, Subpart C - 2012, and beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	ACT	Fishery HG
ROUNDFISH:						
Lingcod	N of 42° N. lat. b/	2,251	2,151	2,151		1,880
	S of 42° N. lat. c/	2,597	2,164	2,164		2,157
Pacific Cod d/	Coastwide	3,200	2,222	1,600		1,200
Pacific Whiting e/	Coastwide	e/	e/	e/		e/
Sablefish	N of 36° N. lat. f/	8,623	8,242	5,347	See Table 2c	
	S of 36° N. lat. g/			1,258		1,224
Cabezon	46°16' to 42° N. lat. h/	50	48	48		48
	S of 42° N. lat. i/	176	168	168		168
FLATFISH:						
Dover sole j/	Coastwide	44,826	42,843	25,000		23,410
English sole k/	Coastwide	10,620	10,150	10,150		10,050
Petrale sole l/	Coastwide	1,279	1,222	1,160		1094.6
Arrowtooth flounder m/	Coastwide	14,460	12,049	12,049		9,971
Starry Flounder n/	Coastwide	1,813	1,511	1,360		1,353
Other flatfish o/	Coastwide	10,146	7,044	4,884		4,686
ROCKFISH:						
Pacific Ocean Perch p/	N of 40°10' N. lat.	1,007	962	183	157	144.1
Shortbelly q/	Coastwide	6,950	5,789	50		49
Widow r/	Coastwide	4,923	4,705	600		539.1
Canary s/	Coastwide	622	594	107		87
Chilipepper t/	S of 40°10' N. lat.	1,872	1,789	1,789		1,774
Bocaccio u/	S of 40°10' N. lat.	732	700	274		260.6
Splitnose v/	S of 40°10' N. lat.	1,610	1,538	1,538		1,531
Yellowtail w/	N of 40°10' N. lat.	4,573	4,371	4,371		3,872
Shortspine thornyhead x/	N of 34°27' N. lat.	2,358	2,254	1,556		1,511
	S of 34°27' N. lat.			401		359
Longspine thornyhead y/	N of 34°27' N. lat.	3,483	2,902	2,064		2,020
	S of 34°27' N. lat.			366		363
Cowcod z/	S of 40°10' N. lat.	13	10	3		2.7
Darkblotched aa/	Coastwide	497	475	296		277.3
Yelloweye bb/	Coastwide	48	46	17		11.1
California Scorpionfish cc/	S. of 34°27' N. lat.	132	126	126		124
Black	N of 46°16' N. lat. dd/	435	415	415		401
	S of 46°16' N. lat. ee/	1,169	1,117	1,000		1,000
Minor Rockfish North ff/	Coastwide	3,820	3,414	2,227		2,116
Nearshore	N of 40°10' N. lat.	116	99	99		99
Shelf		2,197	1,948	968		925
Slope		1,507	1,367	1,160		1,092
Minor Rockfish South gg/	Coastwide	4,291	3,712	2,341		2,290
Nearshore	S of 40°10' N. lat.	1,145	990	990		990
Shelf		2,243	1,890	714		701
Slope		903	832	626		599
SHARKS/SKATES/RATFISH/MORID						
Longnose Skate hh/	Coastwide	3,006	2,873	1,349		1,220
Other fish ii/	Coastwide	11,150	7,742	5,575		5,575

a/ ACLs and HGs are specified as total catch values. Fishery harvest guideline (HG) means the harvest guideline or quota after subtracting from the ACL of ACT any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,251 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,151 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 1,880 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,597 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,164 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,157 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. A range of ACLs were considered in the EIS (96,968 mt-290,903 mt). A new stock assessment will be prepared prior to final adoption of the Pacific whiting specifications.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,623 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,242 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 40-10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003-2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,347 mt and is reduced by 535 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.) The 535 mt tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

g/ Sablefish South. That portion of the coastwide ACL (32 percent) apportioned to the area south of 36° N. lat. is 2,516 mt. An additional 50 percent reduction for uncertainty was made, resulting in an ACL of 1,258 mt.

A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,224 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 50 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 48 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 48 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California) - A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 176 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 168 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 168 mt.

j/ Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,826 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,843 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/ English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 10,620 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 10,150 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 10,050 mt.

l/ Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,279 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 1,222 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 1,160 mt ACL is represents an SPR harvest rate of 32.4 percent. A set-aside of 65 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 1,094.6 mt.

m/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 14,460 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 12,049 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2

species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 9,971 mt.

n/ Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2012, the coastwide OFL of 1,813 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,511 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,360 mt, is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt) and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,353 mt.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,007 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 962 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 183 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 12.9 mt is deducted from the ACT for the Tribal fishery (10.9 mt), the incidental open access fishery (0.1 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144.1 mt.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2012 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt is deducted from the ACL for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 4,923 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,705 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. A constant catch of 600 mt, which corresponds to an SPR harvest rate of 91.3 percent in 2012, will be used to rebuild consistent with the rebuilding plan and a target year to rebuild of 2010. A set-aside of 60.9 mt is deducted from

the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch (11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/ Canary rockfish. A canary rockfish stock assessment update was completed in 2009, based on the full assessment in 2007, and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 622 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 594 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 107 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt), resulting in a fishery HG of 87 mt. Recreational HGs are being specified as follows: Washington recreational, 2 mt; Oregon recreational 7 mt; and California recreational 14.5 mt.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 1,872 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,789 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,774 mt.

u/ Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.). Bocaccio rockfish are managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 732 mt is based on the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 700 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 274 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 260.6 mt.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and in the south (south of 40°10' N. lat.), with species-specific harvest specifications. The 1,610 mt OFL south of 40°10 N. lat. is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,538 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,531 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,573 mt is based on the 2005 stock assessment with the F_{MSY} proxy

of $F_{50\%}$. The ABC of 4,371 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 499 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,872 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,358 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,254 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,556 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt), resulting in a fishery HG of 1,511 mt for the area north of 34°27′ N. lat. For that portion of the stock south of north of 34°27′ N. lat. the ACL is 401 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27′ N. lat reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 359 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,957 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,483 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,902 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,064 mt, and is 79 percent of the coastwide OFL for the biomass in that area. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt), resulting in a fishery HG of 2,020 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 366 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt), resulting in a fishery HG of 363 mt. The sum of the northern and southern area ACLs (2,430 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent bounded between 4 and 21 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with a target year to rebuild of 2068 and an SPR rate of 82.7 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 2.7 mt.

aa/ Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 497 mt and is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 475 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 296 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5) and research catch (2.1 mt), resulting in a fishery HG of 277.3 mt.

bb/ Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 17 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76 percent. A set-aside of 5.9 mt is deducted from the ACL for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/ California Scorpionfish south was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 132 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 126 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 124 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared in 2007 for black rockfish north of 45°56'N. lat.(Cape Falcon, Oregon). The biomass in this area was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16' N. lat. (the Washington/Oregon border) is 435 mt, which is 97 percent of the OFL from the assessed area. The ABC of 415 mt for the area north of 46°16' N. lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 401 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56' N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56' N. lat. is added to the OFL from the assessed area south of 45°56'. The resulting OFL for the area south of 46°16' N. lat. is 1,169 mt. The ABC of 1,117 mt for the south is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\%}$. The black rockfish ACL in the area south of 46°16' N. lat., is subdivided with separate HGs being

set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 3,820 mt is the sum of OFLs for nearshore (116 mt), shelf (2,197 mt) and slope (1,507 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,414 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt - Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt), resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt - Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,291 mt is the sum of OFLs for nearshore (1,145 mt), shelf (2,243 mt) and slope (903 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of Point Conception, blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,712 mt. The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 990 mt. The set-asides for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-asides for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment update was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,006 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,873 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004-2006 catch mortality (landings and discard mortality). The set-asides for longnose skate is 129 mt for the tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equal to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

Table 2b. To Part 660, Subpart C - 2012, and beyond, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
Lingcod					
N of 42° N. lat.	1,880	45%	846	55%	1,034
S of 42° N. lat.	2,157	45%	971	55%	1,186
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	See Table 2a	100%	See Table 2a	0%	0
Sablefish					
N of 36° N. lat.	See Table 2c of this subpart				
S of 36° N. lat.	1,224	42%	514	58%	710
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	10,050	95%	9,548	5%	503
Petrale sole a/	1,094.6		1,060		35
Arrowtooth flounder	9,971	95%	9,472	5%	499
Starry Flounder	1,353	50%	677	50%	677
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch	144.1	95%	137	5%	7
Widow e/	539.1	91%	491	9%	49
Canary a/ c/	87		34.8		29.8
Chilipepper - S of 40°10 N. Lat.	1,774	75%	1,331	25%	443
Bocaccio - S of 40°10 N. Lat. a/	260.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,531	95%	1,454	5%	77
Yellowtail - N of 40°10 N. Lat.	3,872	88%	3,407	12%	465
Shortspine thornyhead					
N of 34°27' N. lat.	1,511	95%	1,435	5%	76
S of 34°27' N. lat.	359		50		309
Longspine thornyhead					
N of 34°27' N. lat.	2,020	95%	1,919	5%	101
Cowcod - S of 40°10 N. Lat. a/	2.7		1.8		0.9
Darkblotched d/	277.3	95%	263	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.20%	557	39.80%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

a/ Allocations were decided through the biennial specification process.

b/ The POP trawl allocation is further divided with 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery.

c/ The canary rockfish trawl allocation is further divided with 6.2 mt for the shorebased IFQ fishery, 3.6 mt for the mothership fishery, and 5.0 mt for the catcher/processor fishery.

d/ The darkblotched rockfish trawl allocation is further divided with 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery.

e/ The widow rockfish trawl allocation is further divided with 107.1mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery.

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Table 2d. To Part 660, Subpart C — At-Sea Whiting Fishery Annual Set-Asides, 2012 and beyond.

Species or Species Complex	**Set-aside (mt)**
Lingcod N of 42°	6
Lingcod S of 42°	NA
Pacific Cod	5
Pacific Whiting	Allocation [a/]
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation [a/]
WIDOW ROCKFISH	Allocation [a/]
Chilipepper S. of 40°10'	NA
Splitnose S. of 40°10'	NA
Yellowtail N. of 40°10'	300

Shortspine Thornyhead N. of 34°27'	20
Shortspine Thornyhead S. of 34°27'	NA
Longspine Thornyhead N. of 34°27'	5
Longspine Thornyhead S. of 34°27'	NA
DARKBLOTCHED	Allocation [a/]
Minor Slope RF N.	55
Minor Slope RF S.	NA
Dover Sole	5
English Sole	5
Petrale Sole - coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation [a/]
BOCACCIO	NA

COWCOD	NA
YELLOWEYE	0
Black Rockfish	NA
Blue Rockfish (CA)	NA
Minor Nearshore RF N.	NA
Minor Nearshore RF S.	NA
Minor Shelf RF N.	35
Minor Shelf RF S.	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 b/

a/ See Table 2.b., to Subpart C, for the at-sea whiting allocations for these species.

b/ As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10′ N lat. (estimated to be approximately 5 mt each).

BILLING CODE 5001–06–C

5. In § 660.140 revise paragraph (c)(1), (c)(2), (d)(1)(ii)(D), (d)(4)(i)(C), and (e)(4)(i) to read as follows:

§ 660.140 Shorebased IFQ Program.

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(c) * * *

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS and IBQ will be issued. Groupings and area subdivisions for IFQ species are those groupings and area subdivisions for which ACLs or ACTs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. The lists of individual groundfish species included in the minor shelf complex north of 40°10′ N. lat., minor shelf complex south of 40°10′ N. lat., minor slope complex north 40°10′ N. lat., minor slope complex south of 40°10′ N. lat., and in the other flatfish complex are specified under the definition of ''groundfish'' at § 660.11. The following are the IFQ species:

IFQ SPECIES

Roundfish
Lingcod N of 42°
Lingcod S of 42°
Pacific cod
Pacific whiting
Sablefish N. of 36°
Sablefish S. of 36°
Flatfish
Dover sole
English sole
Petrale sole
Arrowtooth flounder
Starry flounder

IFQ SPECIES—Continued

Other flatfish stock complex
Pacific halibut (IBQ) N. of 40°10′
Rockfish
Pacific ocean perch N. of 40°10′
Widow rockfish
Canary rockfish
Chilipepper rockfish S. of 40°10′
Bocaccio S of 40°10′
Splitnose rockfish S. of 40°10′
Yellowtail rockfish N. of 40°10′
Shortspine thornyhead N. of 34°27′
Shortspine thornyhead S. of 34°27′
Longspine thornyhead N. of 34°27′

IFQ SPECIES—Continued

Cowcod S. of 40°10′
Darkblotched rockfish
Yelloweye rockfish
Minor shelf rockfish complex N. of 40°10′
Minor shelf rockfish complex S. of 40°10′
Minor slope rockfish complex N. of 40°10′
Minor slope rockfish complex S. of 40°10′

(2) *IFQ Management areas.* A vessel participating in the Shorebased IFQ Program may not fish in more than one IFQ management area during a trip. IFQ management areas are as follows:

(i) Between the US/Canada border and 42°N. lat.,

(ii) Between 42°N. lat. and 40°10′ N. lat.,

(iii) Between 40°10′ N. lat. and 36° N. lat.,

(iv) Between 36°N. lat. and 34°27′ N. lat.,

(v) Between 34°27′ N. lat. and the US/Mexico border.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the 2012 trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ Species	Management area	Shorebased trawl allocation (mt)
Lingcod	North of 42° N. lat	840.00
Lingcod	South of 42° N. lat	970.65
Pacific cod		1,135.00
Pacific Whiting		TBD
Sablefish	North of 36° N. lat	2,467.00
Sablefish	South of 36° N. lat	514.08
Dover sole		22,234.50
English sole		9,542.50
Petrale sole		1,054.60
Arrowtooth flounder		9,462.45
Starry flounder		671.50
Other flatfish		4,197.40
Pacific Ocean perch	North of 40°10′ N. lat	119.50
Widow rockfish		342.62
Canary rockfish		26.60
Chilipepper rockfish	South of 40°10′ N. lat	1,331.25
Bocaccio rockfish	South of 40°10′ N. lat	60.00
Splitnose rockfish	South of 40°10′ N. lat	1,454.45
Yellowtail rockfish	North of 40°10′ N. lat	3,107.36
Shortspine thornyhead	North of 34°27′ N. lat	1,415.45
Shortspine thornyhead	South of 34°27′ N. lat	50.00
Longspine thornyhead	North of 34°27′ N. lat	1,914.00
Cowcod	South of 40°10′ N. lat	1.80
Darkblotched rockfish		248.94
Yelloweye rockfish		0.60
Minor shelf rockfish complex	North of 40°10′ N. lat	522.00
Minor shelf rockfish complex	South of 40°10′ N. lat	86.00
Minor slope rockfish complex	North of 40°10′ N. lat	829.52
Minor slope rockfish complex	South of 40°10′ N. lat	377.37

* * * * *

(4) * * *

(i) * * *

(C) The Shorebased IFQ program accumulation limits are as follows:

Species category	QS and IBQ control limit (in percent)
Non-whiting groundfish species	2.7
Lingcod—N. of 42°	2.5
Lingcod—S. of 42°	2.5
Pacific cod	12.0
Pacific whiting (shoreside)	10.0
Sablefish	
N. of 36° (Monterey north)	3.0
S. of 36° (Conception area)	10.0
Pacific ocean perch N. of 40°10′	4.0
Widow rockfish	5.1
Canary rockfish	4.4
Chilipepper rockfish S. of 40°10′	10.0
Bocaccio S. of 40°10′	13.2
Splitnose rockfish S. of 40°10′	10.0
Yellowtail rockfish N. of 40°10′	5.0
Shortspine thornyhead:	
N. of 34°27′	6.0
S. of 34°27′	6.0
Longspine thornyhead:	
N. of 34°27′	6.0
Cowcod S. of 40°10′	17.7
Darkblotched rockfish	4.5
Yelloweye rockfish	5.7
Minor rockfish complex N. of 40°10′:	
Shelf species	5.0
Slope species	5.0
Minor rockfish complex S. of 40°10′:	
Shelf species	9.0
Slope species	6.0
Dover sole	2.6
English sole	5.0
Petrale sole	3.0
Arrowtooth flounder	10.0
Starry flounder	10.0
Other flatfish stock complex	10.0
Pacific halibut (IBQ) N. of 40°10′	5.4

* * * * *

(e) * * *

(4) * * *

(i) *Vessel limits.* Vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year, and, for species covered by Unused QP Vessel Limits, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are as follows:

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Non-whiting groundfish species	3.2	
Lingcod—N of 42°	3.8	
Lingcod—S of 42°	3.8	
Pacific cod	20.0	
Pacific whiting (shoreside)	15.0	
Sablefish:		
N. of 36° (Monterey north)	4.5	
S. of 36° (Conception area)	15.0	
Pacific ocean perch N. of 40°10′	6.0	4.0
Widow rockfish [1]	8.5	5.1
Canary rockfish	10.0	4.4
Chilipepper rockfish S. of 40°10′	15.0	
Bocaccio S. of 40°10′	15.4	13.2
Splitnose rockfish S. of 40°10′	15.0	
Yellowtail rockfish N. of 40°10′	7.5	
Shortspine thornyhead:.		
N. of 34°27′	9.0	
S. of 34°27′	9.0	
Longspine thornyhead:		
N. of 34°27′	9.0	
Cowcod S. of 40°10′	17.7	17.7
Darkblotched rockfish	6.8	4.5
Yelloweye rockfish	11.4	5.7
Minor rockfish complex N. of 40°10′:		
Shelf species	7.5	
Slope species	7.5	
Minor rockfish complex S. of 40°10′:		
Shelf species	13.5	
Slope species	9.0	
Dover sole	3.9	
English sole	7.5	
Petrale sole	4.5	
Arrowtooth flounder	20.0	
Starry flounder	20.0	
Other flatfish stock complex	15.0	
Pacific halibut (IBQ) N. of 40°10′	14.4	5.4

[1] If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

* * * * *

6. In § 660.231 paragraph (b)(3)(i) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) *Cumulative limits.*

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (i.e., stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2011, the following annual limits are in effect: Tier 1 at 47,697 lb (21,635 kg), Tier 2 at 21,680 lb (9,834 kg), and Tier 3 at 12,389 lb (5,620kg). For 2012 and beyond, the following annual limits are in effect: Tier 1 at 46,238 lb (21,017 kg), Tier 2 at 21,017 lb (9553 kg), and Tier 3 at 12,010 lb (5,459 kg).

* * * * *

[FR Doc. 2011–24702 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 187

Tuesday, September 27, 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

Food Safety and Inspection Service

[Docket No. FSIS–2011–0021]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS) is sponsoring a public meeting on October 4, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items, and draft United States (U.S.) positions that will be discussed at the 19th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), of the Codex Alimentarius Commission (Codex), which will be held in Cairns, Australia October 17–21, 2011. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 19th Session of the CCFICS, and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, October 4, 2011, from 11 a.m.–12:30 p.m.

ADDRESSES: The public meeting will be held in the South Agriculture Building, USDA, 1400 Independence Avenue, SW., Room 0161–S, Washington, DC 20250. Documents related to the 19th Session of the CCFICS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*

Mary Stanley, U.S. Delegate to the 19th Session of the CCFICS invites U.S. interested parties to submit their comments electronically to the following e-mail address *Mary.Stanley@fsis.usda.gov*.

Call-In Number:

If you wish to participate in the public meeting for the 19th Session of the CCFICS by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1–888–858–2144.

Participant Code: 6208658.

FOR FURTHER INFORMATION ABOUT THE 19TH SESSION OF THE CCFICS CONTACT: Mary Stanley, Director, International Policy Division, Office of Policy and Program Development, FSIS, USDA, South Agriculture Building, Room 2925, 1400 Independence Avenue, SW., Washington, DC 20250, *telephone:* (202) 720–0287, *fax:* (202) 720–4929, *e-mail: Mary.Stanley@fsis.usda.gov*.

For Further Information About the Public Meeting Contact: Karen Stuck, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, *telephone:* (202) 205–7760, *fax:* (202) 720–3157, *e-mail: uscodex@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFICS Is Responsible for

(a) Developing principles and guidelines for food import and export inspection and certification systems with a view to harmonizing methods and procedures which protect the health of consumers, ensure fair trading practices and facilitate international trade in foodstuffs.

(b) Developing principles and guidelines for the application of measures by the competent authorities of exporting and importing countries to provide assurance where necessary that foodstuffs comply with requirements, especially statutory health requirements.

(c) Developing guidelines for the utilization, as and when appropriate, of quality assurance systems to ensure that foodstuffs conform to requirements and to promote the recognition of these systems in facilitating trade in food products under bilateral/multilateral arrangements by countries.

(d) Developing guidelines and criteria with respect to format declarations and language of such official certificates as countries may require with a view towards international harmonization.

(e) Making recommendations for information exchange in relation to food import/export control.

(f) Consulting as necessary with other international groups working on matters related to food inspection and certification systems.

(g) Considering other matters assigned to it by Codex in relation to food inspection and certification systems.

The CCFICS is hosted by Australia.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 19th Session of the CCFICS will be discussed during the public meeting:

- Matters referred to the Committee by Codex and other Codex Committees and Task Forces.
- Activities of the FAO and the WHO relevant to the work of the CCFICS.
- Activities of other international organizations relevant to the work of the CCFICS.
- Proposed draft Principles and Guidelines for National Food Control Systems.
- Other business and future work.
- Discussion paper on further guidance regarding attestation in Generic Model Official Certificate.
- Proposals for new work.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the October 4, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mary Stanley, U.S. Delegate for the 19th Session of the CCFICS (see **ADDRESSES**).

Written comments should state that they relate to activities of the 19th Session of the CCFICS.

USDA Nondiscrimination Statement

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on September 20, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–24797 Filed 9–26–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Recreational Information Program.

OMB Control Number: 0648–0052.

Form Number(s): NA.

Type of Request: Regular submission (revision of a current information collection).

Number of Respondents: 783,405 (37,060 net increase).

Average Hours per Response: Screener questionnaires, 5 minutes; angler questionnaires, 6 minutes for telephone survey, 10 minutes for mail survey.

Burden Hours: 53,494 hours (3,854 hours net increase).

Needs and Uses: This request is for a revision of a current information collection. Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are currently collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers. Recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To meet the requirements of MSA, NOAA Fisheries is developing pilot studies to test alternative approaches for surveying recreational anglers. Studies will test the effectiveness of alternative sample frames and data collection methods for contacting anglers and collecting recreational fishing data. The goal of these studies is to develop more efficient and accurate methods for estimating marine recreational fishing catch and effort.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24735 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Elwha River Dam Removal and Floodplain Restoration Ecosystem Service Valuation Pilot.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 164.

Average Hours per Response: 1 hour for interviews, 2 hours for focus groups and stakeholder meetings.

Burden Hours: 304.

Needs and Uses: NOAA is requesting approval to conduct focus groups, stakeholder meetings and one-on-one interviews to develop and test the Elwha River Dam Removal and

Floodplain Restoration Ecosystem Service Valuation Survey. The planned removal of two hydroelectric dams on the Elwha River would be one of the largest dam removal projects in U.S. history. This project, along with restoration actions planned for the floodplain and drained reservoir basins, would have numerous impacts to people of the surrounding region. Impacted groups include recreators who engage in river activities such as fishing and rafting, reservoir users, and members of American Indian Tribes for whom the river has cultural, environmental, and economic significance. The dam removal and restoration actions could also have value to people throughout the Pacific Northwest and the U.S., regardless of whether they visit the Elwha River or Olympic Peninsula. Such nonuse value may be significant because the dam removal and habitat restoration will restore the river to more natural conditions and will restore threatened and endangered populations of salmon and other fish species. This project will also address an important gap in research on indirect and nonuse values provided by habitat restoration and protection.

To ensure the survey questions and policy scenarios presented in this survey are accurate, easily understood, and the least burdensome, it is important to test the survey with small focus groups and in one-on-one interviews.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24738 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–977]

High Pressure Steel Cylinders From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 27, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Alan Ray, 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) 482–0219 or (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2011, the Department of Commerce (''Department'') initiated an antidumping duty investigation on high pressure steel cylinders from the People's Republic of China.[1] The *Initiation Notice* stated that, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''Act''), unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation. The preliminary determination for this investigation is currently due no later than October 18, 2011.

Postponement of Preliminary Determination

Section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) state that if the petitioner makes a timely request for an extension, the Department may postpone the period for making a preliminary determination until no later than the 190th day after the date on which the administering authority initiated the investigation. On September 8, 2011, Norris Cylinder Company (''Petitioner'') made a timely request, pursuant to 19 CFR 351.205(e), for a postponement of the preliminary determination to allow the Department and Petitioner adequate time to thoroughly review and analyze the information submitted by the company selected for individual examination. For the reason identified above and because there are no compelling reasons to deny the request, pursuant to section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination until the 190th day after the day on which the investigation was initiated. Accordingly, the deadline for completion of the preliminary determination is now no later than Wednesday, December 7, 2011.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 20, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–24807 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See High Pressure Steel Cylinders from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 33213 (June 8, 2011) (''*Initiation Notice*'').

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 27, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, 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) 482–0219.

Background

On August 12, 2003, the Department of Commerce (''Department'') published in the **Federal Register**, the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'').[1] On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''Act''), the Department received a properly filed new shipper review request from Thuan An Production Trading & Services Co., Ltd. (''TAFISHCO''). On March 31, 2011, the Department published a notice of initiation for the new shipper review of

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

certain frozen fish fillets from Vietnam covering the period August 1, 2010, through January 31, 2011.[2] On June 23, 2011, the Department extended the deadline for parties to submit surrogate country selection comments and surrogate value data.[3] On August 5, 2011, the Department extended the deadline for parties to file rebuttal surrogate country and surrogate value comments.[4] Between July 22, 2011, and August 12, 2011, the Department received surrogate country and surrogate value comments from interested parties. On September 12, 2011, the Department issued a second supplemental questionnaire to the respondent, requesting additional information regarding both its U.S. sale and factors of production. The preliminary results for this new shipper review are currently due on September 20, 2011.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(1), requires the Department to issue the preliminary results in a new shipper review of an antidumping duty order 180 days after the date on which the new shipper review was initiated. The Department may however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including the need to analyze the information requested in the recently issued supplemental questionnaire, as well as, information pertaining to the *bona fide* nature of the new shipper's sale. In addition, parties have submitted voluminous surrogate country comments and surrogate value data, and thus, the Department will require additional time to analyze these data. We are therefore extending the time for the completion of the preliminary results of this review by 45 days to November 4, 2011.

This notice is published in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: September 16, 2011.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–24806 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 76 FR 17837 (March 31, 2011).

[3] *See* Memorandum for All Interested Parties, through Matthew Renkey, Acting Program Manager Import Administration, from Emeka Chukwudebe, Case Analyst, Import administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Request to Submit Surrogate Values and Surrogate Country Selection Comments, dated June 23, 2011.

[4] *See* Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time to Submit Rebuttal Surrogate Country and Surrogate Value Comments, dated August 5, 2011.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet Tuesday, October 18, 2011, from 8:30 a.m. to 5 p.m. and Wednesday, October 19, 2011, from 8:30 a.m. to 3 p.m. The VCAT is composed of fifteen members appointed by the Under Secretary of Commerce for Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Tuesday, October 18, 2011, from 8:30 to 5 p.m. and Wednesday, October 19, 2011, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2667. Ms. Shaw's e-mail address is *Stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST, open sessions of the VCAT Subcommittee on Public Safety Networks and the VCAT Subcommittee on Manufacturing, and presentations on the Subcommittee's recommendations for deliberation by the full Committee. Recommendations from the Public Safety Networks Subcommittee will cover the key architectural elements of a next generation wireless communication network. The Manufacturing Subcommittee's recommendations will address the structure and role of the Advanced Manufacturing Technology Consortia, a proposed new public-private partnership program. The Committee also will hold a wrap-up discussion including plans for future VCAT subcommittee activities and the 2011 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On October 18, 2011, approximately one-half hour will be reserved in the afternoon for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the VCAT, National Institute of Standards and Technology, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland, 20899, via fax at 301–948–1936 or electronically by e-mail to *gail.ehrlich@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Stephanie Shaw by close of

business Thursday, October 13, 2011. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov* and her phone number is 301–975–2667.

Dated: September 20, 2011.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2011–24792 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Permitting, Vessel Identification, and Vessel Monitoring System Requirements for the Commercial Bottomfish Fishery in the Commonwealth of the Northern Mariana Islands

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 28, 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 Walter Ikehara, (808) 944–2275 or *Walter. Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection (the National Marine Fisheries Service (NMFS) is now requiring a permit fee).

NMFS requires that owners of commercial fishing vessels in the bottomfish fishery in the Commonwealth of the Northern Mariana Islands (CNMI) obtain a federal bottomfish permit. If their vessels are over 40 ft. (12.2 m) long, they must also mark their vessels in compliance with federal identification requirements and carry and maintain a satellite-based vessel monitoring system (VMS). This collection of information is needed for permit issuance, to identify actual or potential participants in the fishery, and aid in enforcement of regulations and area closures.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms. VMS data are collected electronically and automatically.

III. Data

OMB Control Number: 0648–0584.

Form Number: None.

Type of Review: Regular submission (revision and extension of a currently approved collection).

Affected Public: Not-for-profit institutions; state, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 125 total; 6 medium-large vessels (over 40 ft).

Estimated Time per Response: Permit applications and renewals, 30 minutes; vessel identification, 45 minutes; initial VMS installation, 2 hours; VMS maintenance, 2 hours annually.

Estimated Total Annual Burden Hours: 84.

Estimated Total Annual Cost to Public: $4,385.

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 shall 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: September 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24736 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; National Marine Sanctuary Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 28, 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 Vicki Wedell, 301–713–7237 or *Vicki.Wedell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of this information collection.

National Marine Sanctuary regulations at 15 CFR part 922 list specific activities that are prohibited in national marine sanctuaries. These regulations also state that otherwise prohibited activities are permissible if a permit is issued by the Office of National Marine Sanctuaries (ONMS). Persons desiring a permit must submit an application, and anyone obtaining a permit is generally required to submit one or more reports on the activity allowed under the permit.

The recordkeeping and reporting requirements at 15 CFR part 922 form the basis for this collection of information. This information is required by ONMS to protect and

manage sanctuary resources as required by the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*).

The revision to this collection is to include a separate format and updated guidelines for the lionfish removal permit.

II. Method of Collection

Depending on the permit being requested, various applications, reports, and telephone calls may be required from applicants. Applications and reports can be submitted via e-mail, fax, or traditional mail. Applicants are encouraged to use electronic means to apply for permits and submit reports whenever possible.

III. Data

OMB Control Number: 0648–0141.

Form Number: None.

Type of Review: Regular submission (revision and extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; individuals or households; not-for-profit institutions; Federal government; state, local or tribal government.

Estimated Number of Respondents: 634.

Estimated Time per Response: General permits, 1 hour and 30 minutes; special use permits, 8 hours; historical resources permits, 13 hours; baitfish permits, lionfish removal permits, permit amendments and certifications, 30 minutes; voluntary registrations, 15 minutes; appeals, 24 hours; Tortugas access permits, 6 minutes.

Estimated Total Annual Burden Hours: 1,873.

Estimated Total Annual Cost to Public: $1,034 in reporting/recordkeeping costs.

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 shall 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: September 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24737 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA670

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in October, November, and December of 2011. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2011.

DATES: The Atlantic Shark Identification Workshops will be held October 26, November 17, and December 14, 2011.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on October 12, October 19, November 9, November 15, December 14, and December 21, 2011.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in South Boston, MA; Charleston, SC; and Madeira Beach, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Clearwater, FL; Charleston, SC; Ocean City, MD; Kenner, LA; Ronkonkoma, NY; and Key Largo, FL.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by *phone:* (727) 824–5399, or by *fax:* (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 65 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. October 26, 2011, 12 p.m.–4 p.m., South Boston Branch Library, 646 East Broadway, South Boston, MA 02127.

2. November 17, 2011, 12 p.m.–4 p.m., Center for Coastal Environmental Health & Biomolecular Research, 219

Fort Johnson Road, Charleston, SC 29412.

3. December 14, 2011, 12 p.m.–4 p.m., Madeira Beach City Hall, 300 Municipal Drive, Madeira Beach, FL 33708.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items to the workshop:

• Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

• Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 118 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. These certificate(s) are valid for 3 years. As such, vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. October 12, 2011, 9 a.m.–5 p.m., Holiday Inn, 3535 Ulmerton Road, Clearwater, FL 33762.

2. October 19, 2011, 9 a.m.–5 p.m., Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29401.

3. November 9, 2011, 9 a.m.–5 p.m., Princess Royale Oceanside, 9100 Coastal Highway, Ocean City, MD 21842.

4. November 15, 2011, 9 a.m.–5 p.m., Hilton Inn, 901 Airline Drive, Kenner, LA 70062.

5. December 14, 2011, 9 a.m.–5 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.

6. December 21, 2011, 9 a.m.–5 p.m., Holiday Inn, 99701 Overseas Highway, Key Largo, FL 33037.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items with them to the workshop:

• Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.

• Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.

• Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Dated: September 22, 2011.

Steven Thur,

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

[FR Doc. 2011–24835 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Membership of the NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of members who will serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service Professional members

and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses, and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of members to the NOAA PRB will be for a period of 12 months.

DATES: *Effective Date:* The effective date of service of the four new appointees to the NOAA Performance Review Board is September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Omar Williams, Executive Resources Program Manager, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–6301.

SUPPLEMENTARY INFORMATION: The names and positions of the members of the NOAA PRB are set forth below:

Louisa Koch	Director, Office of Education, Office of Education.
Maureen E. Wylie	Chief Financial Officer, Office of the Chief Financial Officer.
Charles S. Baker	Deputy Assistant Administrator, NESDIS, National Environmental Satellite, Data and Information Service.
Russell F. Smith III	Deputy Assistant Secretary for International Fisheries, Office of the Under Secretary for Oceans and Atmosphere.
Christopher C. Cartwright	Chief Financial Officer, National Ocean Service.
David Robinson	Associate Director for Management Resources, National Institute of Standards and Technology, DOC.
Laura K. Furgione	Deputy Assistant Administrator for Weather Services, National Weather Service
John S. Gray, II	Director, Legislative Affairs, Office of Legislative and Intergovernmental Affairs.
Justin H. Kenney	Director of Communications and External Affairs, Office of Public and Constituent Affairs.
Craig McLean	Acting Assistant Administrator For Oceanic and Atmospheric Research, Ocean and Atmospheric Research.
Dr. Ned Cyr	Director, Office of Science and Technology National Marine Fisheries Service.

Dated: September 16, 2011.

Jane Lubchenco,

Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 2011–24833 Filed 9–22–11; 4:15 pm]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA576

Marine Mammals; File No. 16472

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to the NMFS Southwest Fisheries Science Center, Antarctic Ecosystem Research Division, La Jolla, California, (Responsible Party: George Watters, PhD, Director) to take marine mammals for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On July 20, 2011, notice was published in the **Federal Register** (76 FR 43266) that a request for a permit to conduct research on Antarctic fur seals (*Arctocephalus gazella*), southern elephant seals (*Mirounga leonina*), crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), and Weddell seals (*Leptonychotes weddellii*) in the South Shetland Islands, Antarctica, had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes capture, tissue sampling, marking and instrumentation of seals on ice, and ground and aerial surveys of seals on ice and in waters surrounding the South Shetland Islands, Antarctica. Tissue samples from captured seals and salvaged from cetacean and pinniped carcasses may be imported from the Antarctic. The permit is valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 22, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24805 Filed 9–26–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12–Month Cap on Duty- and Quota-Free Benefits.

DATES: *Effective Date:* October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2496.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Pub. L. 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Pub. L. 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Pub. L. 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub. L. 109–432; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or

more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Title VI of the TRHCA 2006 extended this special rule for lesser-developed countries through September 30, 2012.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2011 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a) of TRHCA 2006. Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register.**

For the one-year period, beginning on October 1, 2011, and extending through September 30, 2012 the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,877,430,342 square meters equivalent. Of this amount, 938,715,171 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Kimberly Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2011–24853 Filed 9–26–11; 8:45 am]

BILLING CODE 3410–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency, Department of Defense (DoD).

ACTION: Notice of Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

DATES: *Effective Date:* Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2133, Fort Belvoir, Virginia 22060–6219, (703) 767–1039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board:

Ms. Karen Cash, Assistant Director, Operations, DCAA; chairperson.

Mr. Kenneth Saccoccia, Assistant Director, Policy and Plans, DCAA; member.

Mr. Donald McKenzie, Assistant Director, Integrity & Quality Assurance, DCAA; member.

Regional Performance Review Board:

Mr. David Eck, Regional Director, Mid-Atlantic, DCAA; chairperson.

Mr. Ronald Mullinax, Regional Director, Western, DCAA; member.

Mr. Ronald Meldonian, Regional Director, Northeastern, DCAA; member.

Dated: September 22, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–24789 Filed 9–26–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement For Divert Activities and Exercises, Guam and Commomwealth of The Northern Mariana Islands

AGENCY: Headquarters Pacific Air Forces, United States Air Force, DoD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and U.S. Air Force (USAF) Environmental Impact Analysis Process (32 CFR part 989), the USAF is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) for Divert Activities and Exercises, Guam and Commonwealth of the Northern Mariana Islands.

The proposed divert activities and exercises would involve airfield improvements designed to provide additional divert capability for various military aircraft operating as part of joint training exercises, humanitarian assistance activities, and disaster relief operations for northeast Asia. The proposed action would include the development and construction of facilities and infrastructure designed to support up to one tanker squadron of 12 KC–135 aircraft and its approximately 500 support personnel. This proposed action includes divert activities and exercises involving a tanker squadron, as well as USAF, U.S. Navy, or other military aircraft operating in the region, and ideally would require a 10,000-foot runway. Components of the proposal include a cargo pad; an expanded runway area; new taxiways, aprons, and shoulders; 6,000-square foot maintenance facility; jet fuel receiving, storage, and delivery capability; and associated pavement markings, lighting, security, and other related infrastructure.

The possible alternatives for the divert airfield capability include the international airports on Saipan, Tinian, Rota, or other reasonable alternatives developed during the scoping process. Guam International Airport, as an existing divert location, will be considered in this EIS, as part of the no action alternative.

The Air Force is in the process of inviting potential Cooperating Agencies to participate in aspects of the EIS development as appropriate or required.

Scoping: In order to effectively define the full range of issues to be evaluated in the EIS, the USAF will sponsor a series of scoping meetings to determine the scope of the EIS and solicit comments from interested agencies and members of the public.

DATES: All scoping meetings will be held from 5:30 p.m. to 8:30 p.m. The scheduled dates, times, and locations for the scoping meetings will be published in local media. Scoping meetings will be held in the following locations:

Date	Locations
October 13, 2011	Barrigada Mayor's Office, Barrigada, Guam.
October 14, 2011	Dededo Mayor's Office/Senior Center, Dededo, Guam.
October 17, 2011	Saipan Multi-Purpose Center, Beach Road, Susupe, Saipan.
October 18, 2011	Tinian Elementary School, San Jose Village, Tinian.
October 20, 2011	Sinapalo Elementary School Rota, Sinapalo, Rota.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the USAF has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by November 10, 2011.

Scoping comments may be submitted in writing to the address listed below. Verbal or written comments will also be accepted at each of the public scoping meetings. Scoping comments may also be submitted via the World Wide Web at *http://www.PACAFDivertMarianasEIS.com.* This Web site will be activated on October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Capt Kimberly Bender, PACAF/PA, 25 E Street, Suite G–108, Joint Base Pearl Harbor-Hickam, HI 96853, *Attn:* PACAF Divert Marianas EIS.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–24754 Filed 9–26–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; OxiCool, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to OxiCool, Inc., of 4747 South Broad Street, The Navy Yard, Building 101, Suite LL40, Philadelphia, PA 19112–103, a revocable, nonassignable, exclusive license, in all fields of use on commercial and residential air conditioning systems, to practice in the United States (U.S.), the Government-Owned invention, as identified in U.S. Patent No. 6,240,742: Modular Portable Air-Conditioning System, issued June 05, 2001//U.S. Patent Application No. 12/537,852: Air Conditioning System// Navy Case No. PAX83, filed August 07, 2009; and all U.S. and International applications and/or patents claiming priority from either of the forgoing.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 12, 2011.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Office of Research and Technology Applications, *Attn:* Mr. Paul Fritz, Building 505, Room 117, 22473 Millstone Road, Patuxent River, MD 20670.

FOR FUTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center, Office of Research and Technology Applications, Building 505, Room 117, 22473 Millstone Road, Patuxent River, MD 20670.

Authority: (35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 20, 2011.

L.R. Almand,

Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2011–24768 Filed 9–26–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 27, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 22, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

National Center for Education Statistics

Type of Review: Revision.

Title of Collection: 2012 National Household Education Survey (NHES 2012) Full Scale Data Collection.

OMB Control Number: 1850–0768.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 147,773.

Total Estimated Annual Burden Hours: 19,132.

Abstract: The National Household Education Surveys Program (NHES), conducted by the National Center for Education Statistics, collects data directly from households on early childhood care and education, children's readiness for school, parent perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult and continuing education, parent involvement in education, school choice, homeschooling, and civic involvement. NHES surveys have been conducted approximately every other year from 1991 through 2007 using Random Digit Dial (RDD) sampling and telephone data collection from landline telephones. Each survey collection included the administration of household screening questions (screener) and two or three topical surveys. Like virtually all RDD surveys, NHES Screener response rates have declined (from above 80% in early 1990s to 53% in 2007) and the decline in the percentage of households without landline telephones (from 93% in early 2004 to about 75% in 2009 mostly due to conversion to cellular-only coverage) raises issues about population coverage. To address these issues, the NHES is transitioning from a RDD interviewer administered study to an Address Based Sample, self- administered study. A feasibility test of the methodology was conducted successfully in 2009 and the new design along with a number of interventions to improve response rates and data quality were field tested in 2011. This submission seeks clearance to conduct the first full-scale national NHES data collection utilizing the new design in 2012. Data collection approaches that were most successful at balancing the need to limit overall bias, respondent burden, and cost in the field test will be used for the 2012 data collection. The Parent and Family Involvement in Education and Early Childhood Program Participation modules will be utilized, focusing on early education and care program participation among preschoolers, and parent and family involvement in the education of children in kindergarten through twelfth grades.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4722. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–24844 Filed 9–26–11; 8:45 am]

BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 27, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 22, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Federal Family Educational Loan Program (FFEL) Regulations—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lender Trustees.

OMB Control Number: 1845–0085.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit Institutions; State. Local or Tribal Government.

Total Estimated Number of Annual Responses: 73.

Total Estimated Annual Burden Hours: 73.

Abstract: The regulations in 34 CFR 682.302 (f) assure the Secretary that the integrity of the program is protected from fraud and misuse of the program funds. These regulations require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit's Chief Executive Officer (CEO), which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for profit designation is being certified. Once an entity has been approved as an eligible not-for-profit holder, the entity must provide to the Seretary an annual certification on the State or no-profit entity's letterhead signed by the CEO, which includes the name and lender identification number(s) of the entities for which designation is being recertified. The annual certifcation must state that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary and that it continues to satisfy the requirements of an eligible not-for-profit holder either in its own right or through a trust

agreement with an eligible lender trustee. Further, when an approved not-for-profit holder has a change in status, within 10 days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must submit details of the change to the Secretary.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4663. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–24846 Filed 9–26–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, October 12, 2011.

12:30 p.m.–1 p.m. (E.D.T.)—Registration.

1 p.m.–4 p.m. (E.D.T.)—Meeting.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Lou Capitanio, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. *Phone:* (202) 586–5600.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Methane Hydrate Research and Development Program.

Tentative Agenda: The agenda will include:

Welcome and Introductions;

Committee Business;

Overview of DOE's Methane Hydrate Program;

Report and discussion on work in Alaska and the Gulf of Mexico;

Report and discussion on International activities;

National Energy Technology Laboratory (NETL)'s Methane Hydrate Fellowship; and

Outreach: National Laboratory, NETL, and Interagency Program aspects.

Public Participation: The meeting is open to the public. The Designated Federal Officer of the Committee will conduct the meeting to facilitate the orderly conduct of business. Individuals who would like to attend must RSVP to Trudy Transtrum, at (202) 586–7253 or by e-mail at: *trudy.transtrum@hq.doe.gov*, no later than 12 p.m. on Thursday, October 6, 2011. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Space is limited. 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 Trudy Transtrum at the phone number or e-mail listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: Minutes will be available by writing, emailing or calling Trudy Transtrum, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or by e-mail at: *trudy.transtrum@hq.doe.gov* or telephone at: (202) 586–7253.

Issued at Washington, DC, on September 21, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–24781 Filed 9–26–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee (EAC). 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: Wednesday, October 19, 2011: 2 p.m.–5 p.m. E.D.T.

Thursday, October 20, 2011: 8 a.m.–4 p.m. E.D.T.

ADDRESSES: National Rural Electric Cooperative Association, 4301Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David Meyer, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–024, 1000 Independence Avenue, SW., Washington, DC 20585; *telephone:* (202) 586–3118; *e-mail: David.Meyer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: *Background:* The Electricity Advisory Committee (EAC) was re-established in July 2010, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C, App. 2, to provide advice to the U.S. Department of Energy in implementing the Energy Policy Act of 2005, executing the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The Committee is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Purpose of the Meeting: The meeting of the EAC is expected to include presentations and discussions of reports on a prosperous, low-carbon Europe and the Smart Grid, as well as activities of the Smart Grid, Energy Storage Technologies, and Transmission Subcommittees.

Tentative Agenda: October 19, 2011. 2 p.m.–5 p.m. E.D.T.

1:30 p.m.–2 p.m. Registration.

2 p.m.–2:15 p.m. Welcome and Introductions.

2:15 p.m.–3:15 p.m. Presentation on U.S. Department of Energy's (DOE) Vision of a Future Grid.

3:15 p.m.–3:30 p.m. Break.

3:30 p.m.–4:15 p.m. Response to DOE's Vision of a Future Grid.

4:15 p.m.–5 p.m. EAC Member Roundtable Discussion on DOE's Vision of a Future Grid.

5 p.m. Adjourn Day One of EAC Meeting .

5:30 p.m.–7:30 p.m. EAC Member Dutch Treat Meeting—Venue TBD.

October 20, 2011. 8 a.m.–4 p.m. E.D.T.

7:30 a.m.–8 a.m. Registration. Continental Breakfast and Networking (EAC members only).

8 a.m.–8:15 a.m. Day Two Opening Remarks.

8:15 a.m.–9:30 a.m. Panel Discussion on Micro-Grids.

9:30 a.m.–10 a.m. EAC Members Roundtable Discussion on Micro-Grids.

10 a.m.–10:45 a.m. EAC Energy Storage Technologies Subcommittee Framework White Paper Discussion.

10:45 a.m.–11 a.m. Break.

11 a.m.–11:45 a.m. Discussion of EAC Transmission Subcommittee White Paper on Securing the Grid.

11:45 a.m.–1 p.m. Lunch (Provided to EAC members; Others on Your Own).

1 p.m.–1:45 p.m. Discussion of EAC Smart Grid Subcommittee White Paper on Grid Impacts of Deployment of Electric Vehicles.

1:45 p.m.–2:30 p.m. Panel Discussion on Interconnection-Wide Transmission Planning Processes.

2:30 p.m.–2:45 p.m. Break.

2:45 p.m.–3:15 p.m. EAC Members Roundtable Discussion on Interconnection-Wide Transmission Planning.

3:15 p.m.–3:45 p.m. Public Comments (Must register at time of check-in).

3:45 p.m.–4 p.m. 2011 Year End Wrap Up of EAC Activities.

4 p.m. Adjourn.

The meeting agenda may change to accommodate committee business. For EAC agenda updates, see the Committee Web site at: *http://energy.gov/oe/electricity-advisory-committee-eac.*

Public Participation: The meeting is open to the public. Members of the public who wish to make oral statements pertaining to agenda items should register to do so on the days of the meeting, Wednesday, October 19, 2011, and Thursday, October 20, 2011. Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement to Mr. David Meyer, Designated Federal Officer (DFO), U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Washington, DC 20585 or e-mail to *david.meyer@hq.doe.gov.* The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information Act regulations (10 CFR 1004.11). The DFO is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Note: Delivery of the U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening. The DOE, therefore, encourages those wishing to comment to submit comments electronically by e-mail. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days and will be posted on the Committee Web site at: *http://energy.gov/oe/electricity-advisory-committee-eac* or by contacting Mr. David Meyer at (202) 586–3118 or by e-mail at: *david.meyer@hq.doe.gov.*

Issued at Washington, DC, on September 21, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–24777 Filed 9–26–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–230–4]

Notice of Extension of Comment Period; International Transmission Company, d/b/a ITC Transmission

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Extension of Comment Period.

SUMMARY: International Transmission Company, d/b/a ITC*Transmission* (ITC), filed a request to extend the comment period on its supplemental filing of operational documents in an ongoing Presidential permit proceeding regarding the ITC application to amend Presidential Permit No. PP–230–3.

DATES: Comments must be submitted and received by DOE on or before October 14, 2011.

ADDRESSES: Comments should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by e-mail to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 5, 2009, ITC applied to the DOE to amend Presidential Permit No. PP–230–3 by authorizing ITC to replace a failed 675-MVA transformer with two 700-MVA phase-shifting transformers connected in series at ITC's Bunce Creek Station in Marysville, Michigan.

DOE issued a notice of ITC's application in the **Federal Register** on February 10, 2009 (74 FR 6607), requesting that any comments, protests, or motions to intervention be filed by March 12, 2009. Numerous responsive documents were filed, including late requests to intervene. The filings raised various issues, including the need to review the operational protocols for the facilities with the installation of the new transformers, also known as phase angle regulators (PARs).

On August 9, 2011, DOE received Supplemental Reply Comments from ITC, which completed the ITC response to earlier comments filed in the proceeding by the Midwest Independent Transmission System Operator (MISO), Inc. and the Independent Electricity System Operator of Ontario. According to ITC, the supplemental filing provided the operational agreements required to complete ITC's application in the amendment proceeding, including a letter of agreement between ITC and MISO assigning functional control of the subject facilities at the Bunce Creek Station to MISO.

ITC requested that DOE accept this filing as sufficient to allow DOE to approve its application to amend the ITC Presidential permit on an expedited basis without further notice so that the transformers can be placed into service and benefits from controlling the Lake Erie loop flow can begin. ITC has also indicated that placing the PARs into service now will also allow the parties to better assess the various impacts of PARs operations and thus, better determine if the current operational procedures would need to be modified.

DOE issued a notice in the **Federal Register** on August 18, 2011 (76 FR 52945) inviting comments from prior participants in the proceeding and other interested persons on the ITC supplemental filing until September 23, 2011. Specifically, DOE was interested in obtaining the views of other affected utilities and system operators on the sufficiency of the operating principles provided by ITC.

On September 15, 2011 ITC filed a motion to extend the current comment period on its supplemental filing for three additional weeks until October 14, 2011, in order to allow more time for the parties in the case to finalize ongoing settlement discussions. Therefore, DOE is granting an extension of the current comment period on the ITC supplemental filing until October 14, 2011.

Procedural Matters: Any person desiring to be heard in response to this notice should file written comments with DOE. Five copies of such comments should be sent to the address provided above on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Stephen J. Videto, ITC*Transmission,* 27175 Energy Way, Novi, MI 48377 and John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 Twelfth Street, NW., Suite 630, Washington, DC 20004.

All of the documents filed in the OE Docket No. PP–230–4 proceeding may be viewed by going to the Pending Applications page at *http://energy.gov/node/11845* on the DOE Web site and scrolling to the PP–230–4 section under Pending Presidential Permit Applications.

Issued in Washington, DC, on September 21, 2011.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–24782 Filed 9–26–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–523–000; Docket No. IC11–523–001]

Notice of Commission Information Collection Activities (FERC–523); Comment Request; Extension Under IC11–523, Notice—Commission Information Collection Activities (FERC–523); Comment Request; Submitted for OMB Review Under IC11–523; Errata Notice

On June 14, 2011, the Commission issued a Notice in Docket No. IC11–523–000 to solicit public comment on extending the expiration of an information collection. On August 29, 2011, the Commission issued a Notice in Docket No. IC11–523–001 regarding its submission of an information collection to the Office of Management and Budget for review of information collection requirements. This Errata corrects an error originating in the June 14 notice and carried into the August 29 notice.

Notice in Docket No. IC11–523–000

On page 3, in the table, the average burden hours per response should be changed from 88 to 70.4. This lower figure reflects the actual estimated burden that was previously approved by OMB and not used in the table due to an oversight. Changing this figure in the table necessitates changing the total annual burden hours listed in the table from 11,669 to 9,363 (rounded).

On page 4, due to correcting the error on page 3, the first two sentences should read:

> The estimated total cost to respondents is $640,879 (rounded) [9,363 hours/2080 hours per year, times $142,372 equals $640,879]. The cost per respondent annually is $8,216 (rounded).

Notice in Docket No. IC11–523–001

On page 4, in the table, the average burden hours per response should be changed from 88 to 70.4. This lower figure reflects the actual estimated burden that was previously approved by OMB and not used in the table due to an oversight. Changing this figure in the table necessitates changing the total annual burden hours listed in the table from 11,669 to 9,363 (rounded).

Also on page 4, due to the error in the table, the first two sentences after the table should read:

> The estimated total cost to respondents is $640,879 (rounded) [9,363 hours/2080 hours per year, times $142,372 equals $640,879]. The cost per respondent annually is $8,216 (rounded).

Dated: September 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24762 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–519–000; Docket No. IC11–519–001]

Notice of Commission Information Collection Activities (FERC–519); Comment Request; Extension Under IC11–519.; Notice—Commission Information Collection Activities (FERC–519); Comment Request; Submitted for OMB Review Under IC11–519

On June 15, 2011, the Commission issued a Notice in Docket No. IC11–519–000 to solicit public comment on extending the expiration of an information collection. On August 29, 2011, the Commission issued a Notice in Docket No. IC11–519–001 regarding it's submission of an information collection to the Office of Management and Budget for review of information collection requirements. This Errata corrects an error originating in the June 15 notice and carried into the August 29 notice.

Notice in Docket No. IC11–519–000

On page 3, in the table, the average burden hours per response should be changed from 395 to 395.15. This slightly higher figure reflects the actual estimated burden that was previously approved by OMB and not used in the table due to an oversight. Changing this figure in the table necessitates changing the total annual burden hours listed in the table from 44,240 to 44,257 (rounded).

On page 4, due to correcting the error on page 3, the first two sentences should read:

> The estimated total cost to respondents is $3,029,307 (rounded) [44,257 hours/2080 hours [1] per year, times $142,372 [2] equals $3,029,307 (rounded)]. The cost per respondent annually is $27,047 (rounded).

Notice in Docket No. IC11–519–001

On page 4, in the table, the average burden hours per response should be changed from 395 to 395.15. This slightly higher figure reflects the actual estimated burden that was previously approved by OMB and not used in the

[1] Number of hours an employee works each year.

[2] Average annual salary per employee (including overhead).

table due to an oversight. Changing this figure in the table necessitates changing the total annual burden hours listed in the table from 44,240 to 44,257 (rounded).

Also on page 4, due to correcting the error on page 3, the first two sentences after the table should read:

The estimated total cost to respondents is $3,029,307 (rounded) [44,257 hours/2080 hours [3] per year, times $142,372 [4] equals $3,029,307 (rounded)]. The cost per respondent annually is $27,047 (rounded).

Dated: September 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24765 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2492–012]

Woodland Pulp, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 2492–012.

c. *Dated Filed:* February 28, 2011.

d. *Submitted By:* Woodland Pulp, LLC.

e. *Name of Project:* Vanceboro Storage Project.

f. *Location:* At the outlet of Spednik Lake, on the east branch of the Saint Croix River, in Washington County, Maine and New Brunswick, Canada. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Jay Beaudoin, Woodland Pulp, LLC, 144 Main Street, Baileyville, Maine 04694, at (207) 427–4005 or e-mail at *Jay.Beaudoin@woodlandpulp.com*.

i. *FERC Contact:* Michael Watts at (202) 502–6123 or e-mail at *michael.watts@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are waiving sections 5.7 and 5.8 of the Commission's regulations which established March 30, 2011, and April, 29, 2011 as the deadlines for initiating tribal consultation and commencing scoping proceedings, respectively.

l. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we are designating Woodland Pulp, LLC (Woodland Pulp) as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

n. Woodland Pulp filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

o. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include on the first page, the project name (Vanceboro Project) and number (P–2492–012), and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by November 18, 2011.

q. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be

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[3] Number of hours an employee works each year.

[4] Average annual salary per employee (including overhead).

addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, October 20, 2011.
Time: 10 a.m.
Location: Conference Room. Woodland Pulp's Administration Building, Woodland Pulp, LLC, 144 Main Street, Baileyville, Maine 04694.
Phone: Jay Beaudoin, at (207) 427–4005.

Evening Scoping Meeting

Date: Wednesday, October 19, 2011.
Time: 6 p.m.
Location: Conference Room, Woodland Pulp's Administration Building, Woodland Pulp, LLC, 144 Main Street, Baileyville, Maine 04694.
Phone: Jay Beaudoin, at (207) 427–4005.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a revised scoping document may be issued. The revised scoping document may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct a site visit of the project on Wednesday October 19, starting at 10 a.m. All participants should meet at Domtar Maine Corporation's Administration Building located at 144 Main Street, Baileyville, Maine 04694. All participants are responsible for their own transportation and lunch. Please notify Jay Beaudoin at (207) 427–4005 by October 14, 2011, if you plan to attend the site visit.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: September 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24764 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12711–005]

Ocean Renewable Power Company, LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydrokinetic pilot project license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Pilot License.
b. *Project No.:* 12711–005.
c. *Date Filed:* September 1, 2011.
d. *Applicant:* Ocean Renewable Power Company, LLC.
e. *Name of Project:* Cobscook Bay Tidal Energy Project.
f. *Location:* The proposed project would be located in Cobscook Bay, in Washington County, Maine. The project does not affect federal lands.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–828(c).
h. *Applicant Contact:* Christopher R. Sauer, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, Maine 04101, (207) 772–7707.
i. *FERC Contact:* Timothy Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*
j. This application is not ready for environmental analysis at this time.
k. With this notice, we are asking federal, state, local, and tribal agencies with jurisdiction and/or expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing described below.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

l. *The Project Description:* The primary project facilities would include: (1) A single, approximately 98.5-foot-long, cross-flow Kinetic System turbine generator unit (TGU) mounted on a bottom support frame, with a rated capacity of 60 kilowatts (kW), in Phase 1; (2) four, approximately 98.5-foot-long, cross-flow Kinetic System TGUs mounted on bottom support frames, with a rated capacity of 60 kW each, in Phase 2; (3) a direct current power and data cable approximately 3,800 feet long (3,600 feet underwater and 200 feet on shore) extending from the TGUs to the onshore station house; (4) an on-shore building 32 feet wide by 35 feet long, housing the SatCon power inverter and the supervisory control and data acquisition (SCADA) system; and (5) appurtenant facilities for navigation safety and operation. The project would have a total rated capacity of 300 kW, with an estimated annual generation between 1,200,000 and 1,300,000 kilowatt-hours.

m. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's *Web site* at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item (h) above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

o. Procedural Schedule:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of requested additional information	October 1, 2011.
Commission issues REA notice	October 6, 2011.
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	November 5, 2011.
Commission issues Single EA	January 4, 2011.
Comments on EA	February 3, 2011.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24755 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Change In IC Docket Numbering Policy

Notice is hereby given that the Commission is modifying the numbering system for the docket prefix IC. These IC docket notices announce the Commission's efforts to have public involvement in its information collection requirements prior to requesting and obtaining approval from the Office of Management and Budget (OMB).

The Paperwork Reduction Act of 1995 (44 U.S.C. 35) requires agencies to plan for the development of new collections of information and the extension of existing collections of information far in advance of sending them forward to OMB for approval. Advanced planning is necessary because agencies must incorporate public participation in the development of information collection requirements imposed on the public. To achieve this public participation, the Commission must ''provide 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies'' (44 U.S.C. 3506(c)(2)(A)). In these notices, the Commission must solicit comments on the need for the information, its practical utility, the accuracy of the Commission's burden estimate, and ways to minimize the burden, including through ''the use of automated collection techniques or other forms of information technology.''

In addition, agencies must publish a notice in the **Federal Register** stating that the proposed collection of information has been submitted for OMB review. This is the second notice to appear in the **Federal Register** and provides the public with a second opportunity to comment. OMB must provide at least 30 days for public comment after receipt of the Commission's submission and prior to making a decision.

On December 30, 1997, the Commission adopted the current IC docket prefix [1] in order to properly track any comments it receives in response to **Federal Register** notices concerning the Commission's collections of information. In order to respond to current technical and tracking needs of its information collections, the Commission is revising the way the IC docket prefix is set up. Beginning on October 1, 2011, IC dockets will continue to be set up as ICFY–NNN–NNN. However, the first ''NNN'' for new IC dockets will now be a sequential number (rather than the collection or form number), as notices are issued over the course of the fiscal year. In addition, the second ''NNN'' will now be ''000'' for both 60-day and 30-day notices. For example, docket number IC12–1–000 would contain all material pursuant to the extension of a single collection of information (rather than material related to the FERC Form 1).

The RM docket prefix will continue to be used for rulemakings that affect information collections.

[1] The Notice is available in eLibrary at *http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=3058091.* The IC dockets were set up as ICFY–NNN–NNN, where the FY stood for the fiscal year in which the notice was issued, the first NNN represented an identifier for the Commission's collection of information requirement, and the second NNN represented either the first or second notice, with 000 to designate a 60-day notice and 001 to designate a 30-day notice. For example, IC07–2–000 represented the 60-day notice for the Commission information collection FERC Form No. 2 during the fiscal year 2007.

Dated: September 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24763 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings (September 19, 2011)

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2564–000.
Applicants: Southern Natural Gas Company, LLC.
Description: Southern Natural Gas Company, L.L.C. submits tariff filing per 154.204: SNG Name Change—Errata to be effective 8/1/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5118.
Comment Date: 5 p.m. Eastern Time on Monday, September 26, 2011.

Docket Numbers: RP11–2565–000.
Applicants: Sequent Energy Management, L.P.
Description: Joint Petition of Sequent Energy Management, L.P. and Nicor Enerchange L.L.C. For Temporary Waiver Of Capacity Release Regulations and Policies.
Filed Date: 09/14/2011.
Accession Number: 20110914–5143.
Comment Date: 5 p.m. Eastern Time on Monday, September 26, 2011.

Docket Numbers: RP11–2566–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.204: Filing to Remove Expired Agreements to be effective 10/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: RP11–2567–000.
Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: EDF Negotiated Rate Agreement to be effective 11/1/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5084.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: RP11–2568–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Non-Conforming/Negotiated Rate—South Jersey #28769 to be effective 11/1/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5105.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: RP11–2569–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Create ENS Service to be effective 11/1/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5059.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2548–001.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits tariff filing per 154.205(b): WTG Hugoton, LP 2011 Annual Charge Adjustment Amendment 1 to be effective 10/1/2011 under RP11–2548 Filing Type: 600.
Filed Date: 09/19/2011.
Accession Number: 20110919–5050.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: RP11–2549–001.
Applicants: West Texas Gas, Inc.
Description: West Texas Gas, Inc. submits tariff filing per 154.205(b): West Texas Gas, Inc. 2011 Annual Charge Adjustment Amendment 1 to be effective 10/1/2011.
Filed Date: 09/19/2011.
Accession Number: 20110919–5051.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: RP11–2550–001.
Applicants: Western Gas Interstate Company.
Description: Western Gas Interstate Company submits tariff filing per 154.205(b): Western Gas Interstate Company 2011 Annual Charge Adjustment Amendment 1 to be effective 10/1/2011.
Filed Date: 09/19/2011.
Accession Number: 20110919–5052.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: RP11–2569–001.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.205(b): Amendment to filing in RP11–2569–000 to be effective 11/1/2011.
Filed Date: 09/19/2011.
Accession Number: 20110919–5053.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24745 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–126–000.
Applicants: Full Circle Renewables, LLC.
Description: Notice of Self Certification of Exempt Wholesale Generator Status Full Circle Renewables, LLC.
Filed Date: 09/15/2011.
Accession Number: 20110915–5148.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3584–000.
Applicants: Florida Power Corporation.
Description: Compliance Refund Report of Florida Power Corporation.
Filed Date: 08/30/2011.
Accession Number: 20110830–5089.
Comment Date: 5 p.m. Eastern Time on Monday, September 26, 2011.

Docket Numbers: ER11–4541–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: J040 GIA Termination (2) to be effective 11/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5143.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4542–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: SA #3048 Hawks Nest Hydro and Appalachian Power Co. to be effective 8/16/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5147.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4543–000.
Applicants: Major Energy Electric Services, LLC.
Description: Major Energy Electric Services, LLC submits tariff filing per 35.1: Major Energy Electric Services, LLC MBR Re-file to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5149.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4544–000.
Applicants: Respond Power, LLC.
Description: Respond Power, LLC submits tariff filing per 35.1: Respond Power, LLC MBR Re-file to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5159.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4545–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits tariff filing per 35.15: Cancellation of First Revised Service Agreement No. 3—City of Wauchula to be effective 9/30/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5164.

Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4546–000.
Applicants: Eastman Cogeneration LP.
Description: Eastman Cogeneration LP submits tariff filing per 35.1: Baseline Tariff Filing to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5178.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4547–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDAT SERV AG SCE–GPS UCSB Fuel Cell Project to be effective 9/17/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5008.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4548–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(i): CCSF Facilities Charge Agreement for Moscone Convention Center to be effective 11/16/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5013.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4549–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company's Request for Extension of Waiver of Wholesale Requirements Tariff Provisions.
Filed Date: 09/15/2011.
Accession Number: 20110915–5191.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4550–000.
Applicants: Alternate Power Source Inc.,
Description: Alternate Power Source Inc., submits tariff filing per 35.1: Alternate Power Source, Inc. MBR Re-file to be effective 9/16/2011 under ER11–4550 Filing Type: 360
Filed Date: 09/16/2011.
Accession Number: 20110916–5054.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4551–000.
Applicants: Harvard Dedicated Energy Limited.
Description: Harvard Dedicated Energy Limited submits tariff filing per 35.1: Harvard Dedicated Energy Limited MBR re-file to be effective 9/16/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5060.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

September 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24744 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3246–001; ER11–2044–003; ER11–3876–002; ER10–2605–001.
Applicants: MidAmerican Energy Company, Cordova Energy Company LLC, PacifiCorp, Yuma Cogeneration Associates.
Description: Notice of Change in Status of PacifiCorp, MidAmerican Energy Co., Cordova Energy Co., LLC, and Yuma Cogeneration Associates.
Filed Date: 09/14/2011.
Accession Number: 20110914–5142.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–2970–002.
Applicants: Peetz Logan Interconnect, LLC.
Description: Peetz Logan Interconnect, LLC submits tariff filing per 35: Peetz Logan Interconnect, LLC OATT Compliance Filing to Attachment C to be effective 11/13/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5082.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4177–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 607R14 Westar Energy, Inc. NITSA NOA to be effective 7/1/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5108.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4522–000.
Applicants: AEP Texas Central Company.
Description: AEP Texas Central Company submits tariff filing per 35.13(a)(2)(iii: 20110914 TCC-Magic Valley Wind Farm I Amd.1 IA to be effective 8/16/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5080.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4523–000.
Applicants: AEP Texas North Company.
Description: AEP Texas North Company submits tariff filing per 35.13(a)(2)(iii: TNC–FRV Bryan Solar Preliminary Development Agreement to be effective 8/30/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5087.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4524–000.
Applicants: Haverhill North Coke Company.
Description: Haverhill North Coke Company submits tariff filing per 35.12: Haverhill North Coke Baseline filing to be effective 9/14/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5093.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4525–000.
Applicants: Middletown Coke Company, LLC.
Description: Middletown Coke Company, LLC submits tariff filing per 35.12: Middletown Baseline Tariff to be effective 9/14/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5107.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4526–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position None; Original Service Agreement No. 3056 to be effective 8/15/2011.
Filed Date: 09/14/2011.
Accession Number: 20110914–5119.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4527–000.

Applicants: Record Hill Wind LLC.
Description: Record Hill Wind LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 10/5/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5000.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4528–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Original Service Agreement No. 1846 submitted on behalf of PJM Interconnection, L.L.C.
Filed Date: 09/14/2011.
Accession Number: 20110914–5139.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4529–000.
Applicants: Green Light Energy, LLC.
Description: Notification of Cancellation Green Light Energy LLC seeks to cancel its market-based rate tariff originally accepted in ER11–4529.
Filed Date: 09/15/2011.
Accession Number: 20110915–5034.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4530–000.
Applicants: Dynamic PL, LLC.
Description: Dynamic PL, LLC submits tariff filing per 35.1: Dynamic PL, LLC Re-file to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5044.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4531–000.
Applicants: Reliable Power, LLC.
Description: Reliable Power, LLC submits tariff filing per 35.1: Reliable Power, LLC MBR Re-file to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5047.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4532–000.
Applicants: S.J. Energy Partners, Inc.
Description: S.J. Energy Partners, Inc. submits tariff filing per 35.1: S.J. Energy Partners, Inc. Market Based Rates Re-file to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5050.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24743 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3576–002; ER97–3583–006; ER11–3401–003; ER10–3138–002.
Applicants: Denver City Energy Associates, L.P., Golden Spread Electric Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC, GS Electric Generating Cooperative Inc.
Description: Supplemental Information of Golden Spread Electric Cooperative, Inc. *et al.*
Filed Date: 09/14/2011.
Accession Number: 20110914–5050.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–3846–002.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits tariff filing per 35: Compliance Filing of El Paso-Tucson Settlement to be effective 9/1/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5124.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–3884–001.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits tariff filing per 35: Compliance Refiling of Rate Schedule No. 107 to be effective 9/1/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5065.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4533–000.
Applicants: HIKO Energy, LLC.
Description: HIKO Energy, LLC submits tariff filing per 35.1: HIKO Energy LLC Market Based Rates & Name Change to be effective 9/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5055.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4534–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(1): Amended and Restated Power Sale Agreement Filing to be effective 11/14/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5071.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4535–000.
Applicants: Plymouth Rock Energy, LLC.
Description: Plymouth Rock Energy, LLC submits tariff filing per 35.1: Plymouth Rock Energy, LLC Baseline Tariff Filing to be effective 9/16/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5097.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4536–000.
Applicants: Full Circle Renewables, LLC.
Description: Full Circle Renewables, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 11/15/2011.
Filed Date: 09/15/2011.
Accession Number: 20110915–5098.
Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Docket Numbers: ER11–4537–000.
Applicants: Haleywest L.L.C.
Description: Haleywest L.L.C. submits notice of cancellation of its market-based rate tariff.
Filed Date: 09/14/2011.
Accession Number: 20110914–0043.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4538–000.
Applicants: Yuma Power Limited Liability Company.
Description: Yuma Power Limited Liability Company submits notice of its market-based rate tariff cancellation.
Filed Date: 09/14/2011.
Accession Number: 20110914–0031.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4539–000.
Applicants: Altair Energy Trading, Inc.
Description: Altair Energy Trading, Inc submits notice of cancellation of its

market-based rate tariff effective 9/28/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–0050.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4540–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: MR1 Revisions Relating to Real-Time Automated Mitigation of Supply Offers to be effective 12/31/9998.

Filed Date: 09/15/2011.

Accession Number: 20110915–5128.

Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–45–000.

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Application of Old Dominion Electric Cooperative under ES11–45, for Authority to Issue Short- and Long-Term Debt and Guarantees.

Filed Date: 09/15/2011.

Accession Number: 20110915–5116.

Comment Date: 5 p.m. Eastern Time on Thursday, October 06, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24742 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2570–000.
Applicants: Central New York Oil and Gas, LLC.
Description: Central New York Oil and Gas, LLC submits tariff filing per 154.204: Errata to CNYOG Nonconforming FWSA filing in Docket No. RP11–2552–000, to be effective 10/1/2011.
Filed Date: 09/20/2011.
Accession Number: 20110920–5052.
Comment Date: 5 p.m. Eastern Time on Monday, September 26, 2011.

Docket Numbers: RP11–2571–000.
Applicants: East Cheyenne Gas Storage, LLC.
Description: East Cheyenne Gas Storage, LLC submits tariff filing per 154.203: ECGS Baseline compliance filing to be effective 9/20/2011.
Filed Date: 09/20/2011.
Accession Number: 20110920–5098.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: RP11–2572–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.204: Semi-Annual Transportation Retainage Adjustment to be effective 11/1/2011.
Filed Date: 09/21/2011.
Accession Number: 20110921–5035.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24741 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–119–000.
Applicants: Mario J. Gabelli, GGCP, Inc., GGCP Holdings, LLC, GAMCO Investors, Inc.
Description: Request for Blanket Authorizations to Acquire Securities under Section 203(a) of the Federal Power Act.
Filed Date: 09/19/2011.
Accession Number: 20110919–5043.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–127–000.
Applicants: Invenergy Illinois Solar I LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Invenergy Illinois Solar I LLC.
Filed Date: 09/16/2011.
Accession Number: 20110916–5077.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2547–004.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance Filing to Correct EITC Fomula to be effective 5/18/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5094.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4013–001.
Applicants: PJM Interconnection, L.L.C., Commonwealth Edison Company.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): PJM and ComEd submit responses to FERC's August 31, 2011 Letter, to be effective 6/15/2011.
Filed Date: 09/16/2011.

Accession Number: 20110916–5162.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4501–001.
Applicants: Caney River Wind Project, LLC.
Description: Caney River Wind Project, LLC submits tariff filing per 35.17(b): Caney River Wind Project, LLC Amended MBR Tariff to be effective 10/1/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5146.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4552–000.
Applicants: ONEOK Energy Services Company, L.P.
Description: ONEOK Energy Services Company, L.P. submits tariff filing per 35.1: ONEOK Energy Services Company Baseline MBR Filing to be effective 9/16/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5082.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4553–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: OATT Revised Sections 13 and 14 to be effective 8/1/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5105.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4554–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits tariff filing per 35: Compliance Filing of El Paso-Tucson Settlement, EL06–45–000, EL06–46–000 to be effective 9/1/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5107
Comment Date: 5:00 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4555–000.
Applicants: ONEOK Energy Services Company, L.P.
Description: ONEOK Energy Services Company, L.P. submits tariff filing per 35: ONEOK Energy Services Order No. 697 Compliance Filing of MBR Tariff to be effective 9/16/2011.
Filed Date: 09/16/2011.
Accession Number: 20110916–5108.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4556–000.
Applicants: New England Power Company.
Description: Notice of Cancellation of FERC Service Agreement No. IA–NEP–14 with Dominion Energy Salem Harbor, LLC, by New England Power Company.
Filed Date: 09/16/2011.
Accession Number: 20110916–5129.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ER11–4557–000.
Applicants: GS Electric Generating Cooperative Inc.
Description: Notice of Non-Jurisdictional Status and Withdrawal of Rate Schedule of GS Electric Generating Cooperative, Inc.
Filed Date: 09/16/2011.
Accession Number: 20110916–5180.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–46–000.
Applicants: PECO Energy Company.
Description: Application of PECO Energy Company under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.
Filed Date: 09/16/2011.
Accession Number: 20110916–5095.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

Docket Numbers: ES11–47–000.
Applicants: Commonwealth Edison Company.
Description: Application of Commonwealth Edison Company under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.
Filed Date: 09/16/2011.
Accession Number: 20110916–5097.
Comment Date: 5 p.m. Eastern Time on Friday, October 07, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: September 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24740 Filed 9–26–11; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

LWP Lessee, LLC	Docket No. EG11–89–000
El Segundo Energy Center LLC	Docket No. EG11–90–000
Mojave Solar LLC	Docket No. EG11–91–000
Pocahontas Prairie Wind, LLC	Docket No. EG11–92–000
Pocahontas Prairie Wind, LLC	Docket No. EG11–93–000
Hatch Solar Energy Center I, LLC	Docket No. EG11–94–000
Calpine Greenleaf, Inc	Docket No. EG11–95–000
Stony Creek Energy LLC	Docket No. EG11–96–000
Post Rock Wind Power Project, LLC	Docket No. EG11–97–000
Shiloh III Wind Project, LLC	Docket No. EG11–98–000
Granite Reliable Power, LLC	Docket No. EG11–99–000

Take notice that during the month of August 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: September 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24758 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–539–000]

Notice of Intent To Prepare an Environmental Assessment for the Proposed Marshfield Reduction Project and Request for Comments on Environmental Issues; ANR Pipeline Company

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Marshfield Reduction Project (Project) involving construction and operation of facilities by ANR Pipeline Company (ANR) in Portage County, Wisconsin. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on October 17, 2011.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice ANR provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

ANR proposes to construct and operate a new 6,300-horsepower (hp) compressor station and appurtenant facilities on its existing 24-inch-diameter Mainline No. 226, located about 4 miles north of the City of Stevens Point in Portage County, Wisconsin. ANR stated that the facilities would eliminate the need for certain shippers to maintain 101,135 dekatherms per day of primary receipt point capacity at ANR's Marshfield receipt point in Wood County, Wisconsin, and allow the shipment of additional gas volumes to users in Wisconsin and Minnesota.

The Marshfield Reduction Project would consist of the following facilities:

- One new compressor building housing an approximately 6,300-hp gas turbine driving a centrifugal compressor unit;
- An 8,400 gallon condensate tank;
- A 2 million British Thermal Unit per hour natural gas boiler;
- A 440-hp emergency natural gas powered generator;
- Electrical/control skid;
- Personnel skid with water/wastewater facilities;
- A blow down; and
- Other auxiliary equipment.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the Marshfield Reduction Project would take place within a 36-acre site that ANR stated it would purchase. Construction within this site would impact about 14 acres which includes 10 acres for temporary work space and 4 acres for construction of a permanent access road and a building that would house the compressor facilities. After construction about 10 acres would be restored and allowed to revert to their former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on this page.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

Wisconsin State Historic Preservation Office (SHPO), and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before October 17, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–539–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project. Please note that if you wish to be added to our environmental mailing list (see below), your eComment must include your name and address;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own property within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's website.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–539). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24757 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–56–000

Notice of Intent to Hold Public Meetings and Hear Public Comment on the Proposed New Jersey-New York Expansion Project Draft Environmental Impact Statement; Algonquin Gas Transmission, LLC; Texas Eastern Transmission, LP

On September 9, 2011, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued the Draft Environmental Impact Statement (draft EIS) for the proposed New Jersey-New York Expansion Project (NJ-NY Project or Project) and mailed it to resource and land management agencies, interested organizations, and individuals. The draft EIS assesses the potential environmental effects of the

construction and operation of the NJ-NY Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA).

Any person wishing to comment on the draft EIS may do so. The public comment deadline is October 31, 2011. In addition to or in lieu of sending written comments, FERC staff invites you to attend one of the public comment meetings conducted in the Project area, scheduled as follows:

Date	Location
Monday, October 17, 2011, 7:00 p.m.	P.S. 44—Thomas C. Brown School Auditorium, 80 Maple Parkway, Staten Island, New York 10303.
Tuesday, October 18, 2011, 7:00 p.m.	Knights of Columbus Hall, 669 Avenue C, Bayonne, New Jersey 07002.
Wednesday, October 19, 2011, 7:00 p.m.	James J. Ferris High School Auditorium, 35 Colgate Street, Jersey City, New Jersey 07302.
Thursday, October 20, 2011, 7:00 p.m.	P.S. 41—Greenwich Village School Auditorium, 116 West 11th Street, New York, New York 10011.

The locations and times of these meetings will also be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other relevant information. Interested groups and individuals are encouraged to attend the public comment meetings and present oral comments on the draft EIS. A transcript of the meetings will be prepared and submitted to the docket for public review.

We expect to have numerous attendees and speakers at the meetings. Based on the attendance at previous meetings, commentors may be required to limit verbal presentations to 5 minutes or less; therefore, we request you structure your comments so that they are as specific and concise as possible. This will allow us to accommodate all who are interested in speaking. If you would prefer, you may submit written comments at the public meeting or directly to the FERC docket at your convenience. Oral comments will not receive greater attention than written comments. We will address oral and written comments equally.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 502–8371.

CD–ROM copies of the draft EIS were mailed to federal, state, and local agencies; public interest groups; individuals who requested a copy of the draft EIS or provided comments during scoping; libraries and newspapers in the Project area; and parties to this proceeding. Hard copy versions of the draft EIS were mailed to those specifically requesting them. A limited number of hard copies and CD–ROMs are available from the Public Reference Room identified above.

Please note that copies of the CD–ROM were mailed with a postcard that included a docket number for Algonquin Gas Transmission, LLC that was incorrect. There is only one docket number for the Project: CP11–56–000.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP11–56). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnline *Support@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: September 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24756 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4536–000]

Full Circle Renewables, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Full Circle Renewables, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 6, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24761 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4527–000]

Record Hill Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Record Hill Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 5, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24760 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4525–000]

Middletown Coke Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Middletown Coke Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 5, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24759 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP11–2328–000; RP04–274–000; RP11–2356–000]

Kern River Gas Transmission Company; Notice of Technical Conference

On July 29, 2011, pursuant to section 4 of the Natural Gas Act (NGA), Kern River Gas Transmission Company (Kern River) filed revised tariff records in Docket No. RP11–2328–000, to amend several provisions under certain firm rate schedules, which it refers to as the ''Self-Contained Rate Schedules.'' [1] Kern River proposed to limit service under these rate schedules exclusively to the currently effective contracts of shippers taking service under those rate schedules and to require all other firm shippers to take service under its standard firm open access transportation Rate Schedule KRF–1. Kern River also proposed to include in its tariff a *pro forma* agreement applicable to rollover service under the

[1] The Rate Schedules subject to the instant filing are Rate Schedules CH–1, MO–1, SH–1, and UP–1.

subject rate schedules. On August 29, 2011, the Commission accepted and suspended the tariff records proposed to be effective February 1, 2012, subject to refund and to the outcome of a technical conference. *Kern River Gas Transmission Company,* 136 FERC ¶ 61,140 (2011).

Take notice that a technical conference to discuss the differences in the terms and conditions of service between the Self-Contained Rate Schedules and Rate Schedule KRF–1 and other related issues encompassed by Docket Nos. RP04–274–000 and RP11–2356–000, will be held on, Tuesday, October 4, 2011 at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Federal Energy Regulatory Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–502–2106 with the required accommodations.

All interested persons, parties, and staff are permitted to attend. For further information please contact Robert D. McLean (202) 502–8156.

Dated: September 20, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24766 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7518–012]

Erie Boulevard Hydropower L.P.; Notice of Dispute Resolution Panel Meeting and Technical Conference

On September 16, 2011, Commission staff, in response to the filing of notice of study dispute by the New York State Department of Environmental Conservation (NYSDEC) on August 29, 2011, convened a single three-person Dispute Resolution Panel (Panel) pursuant to 18 CFR 5.14(d).

The Panel will hold a technical conference at the time and place noted below. The session will address study disputes regarding six separate studies that focus on aquatic resource related issues. The disputes primarily address the Commission's determination on data collection and study methodologies being required for assessing project related effects on aquatic resources. The focus of the technical session is for the disputing agency, applicant, and Commission to provide the Panel with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at their discretion, limit the speaking time for each participant.

If you have any questions, please contact Ryan Hansen at (202) 502–8074.

Technical Conference

Date: Wednesday, October 5, 2011.

Time: 8:30 a.m.–5 p.m. (EDT).

Place: Doubletree Hotel Syracuse, 6301 State Route 298, East Syracuse, New York 13057.

Phone: 315–432–0200.

Dated: September 20, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24767 Filed 9–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Desert Southwest Customer Service Region—Western Area Lower Colorado Balancing Authority—Rate Order No. WAPA–151

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Concerning Network Integration Transmission Service and Ancillary Services Formula Rates.

SUMMARY: The Deputy Secretary of Energy has confirmed and approved Rate Order No. WAPA–151 and Rate Schedules PD–NTS3, INT–NTS3, DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–SPR3, DSW–SUR3, and DSW–GI1, placing the Western Area Power Administration's (Western) Desert Southwest Customer Service Region (DSWR) Parker-Davis Project (P–DP) Network Integration Transmission Service (NITS), the AC Intertie Project (Intertie) NITS, and the Western Area Lower Colorado (WALC) Balancing Authority Ancillary Services formula rates into effect on an interim basis. The Provisional Formula Rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other formula rates. The Provisional Formula Rates will provide sufficient revenue to pay all annual costs, including interest expense, and to repay power investment within the allowable periods.

DATES: Rate Schedules PD–NTS3, INT–NTS3, DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–SPR3, DSW–SUR3, and DSW–GI1 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 2011, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period ending September 30, 2016, or until the rate schedules are superseded.

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 Deputy Secretary of Energy approved Rate Schedules PD–NTS2, INT–NTS2, DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, and DSW–SUR2 on June 26, 2006 (Rate Order No. WAPA–127, 71 FR 36332).[1] These rates became effective on July 1, 2006, with an expiration date of June 30, 2011. The rate schedules were extended temporarily through September 30, 2013, under Rate Order No. WAPA–152.[2]

Desert Southwest Customer Service Region Network Integration Transmission Service

Rate Schedules PD–NTS3 and INT–NTS3 for P–DP and Intertie NITS are based on a revenue requirement that recovers the DSWR transmission system costs for facilities associated with providing all transmission services as well as the non-transmission facility costs allocated to transmission service.

[1] FERC confirmed and approved Rate Order No. WAPA–127 on November 21, 2006, in Docket No. EF06–5191. *See United States Department of Energy, Western Area Power Administration,* 117 FERC ¶ 62,172.

[2] WAPA–152, Extension of Rate Order No. WAPA–127 through September 30, 2013. 76 FR 28767, May 18, 2011.

WALC Ancillary Services

Western will provide seven ancillary services pursuant to its Tariff. These are: (1) Scheduling, System Control, and Dispatch Service (DSW–SD3); (2) Reactive Supply and Voltage Control Service from Generation or Other Sources Service (VAR Support) (DSW–RS3); (3) Regulation and Frequency Response Service (Regulation) (DSW–FR3); (4) Energy Imbalance Service (DSW–EI3); (5) Spinning Reserve Service (DSW–SPR3); (6) Supplemental Reserve Service (DSW–SUR3); and (7) Generator Imbalance Service (DSW–GI1). Rates for these services will be recalculated each year to incorporate the most recent financial and load information, and will be applicable to all NITS and WALC Ancillary Services customers.

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 the Administrator of Western; (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 procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–151, the proposed NITS and WALC Ancillary Services formula rates, into effect on an interim basis. By this Order, I am placing the rates into effect in less than 30 days to meet contract deadlines, to avoid financial difficulties and to provide a rate for a new service. The new Rate Schedules PD–NTS3, INT–NTS3, DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–SPR3, DSW–SUR3, and DSW–GI1 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: September 19, 2011.

Daniel B. Poneman,

Deputy Secretary.

Deputy Secretary

Rate Order No. WAPA–151

In the Matter of: Western Area Power Administration

Rate Adjustment for the Desert Southwest Customer Service Region; Network Integration Transmission Service and Ancillary Services; Order Confirming, Approving, and Placing the Parker-Davis Project and AC Intertie Project Network Integration Transmission Service and Western Area Lower Colorado Ancillary Services Formula Rates Into Effect on an Interim Basis

These Network Integration Transmission Service (NITS) and Western Area Lower Colorado (WALC) Ancillary Services formula rates are established pursuant to Section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section (c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); 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 the Administrator of Western; (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 the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms/terms and definitions apply:

Acronym/term	Definition
$/kW-month	Dollars per kilowatt per month.
12-cp	Rolling 12-month peak average of customers' loads in excess of Federal entitlement, coincident with the applicable transmission project's peak.
Administrator	The Administrator of the Western Area Power Administration.
Area Control Error (ACE)	The instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of frequency bias and correction for meter error.
Ancillary Services	Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Service Provider's transmission system in accordance with good utility practice.
ATRR	Annual Transmission Revenue Requirement.
Automatic Generation Control (AGC)	Equipment that automatically adjusts generation in a Balancing Authority Area from a central location to maintain the Balancing Authority's interchange schedule plus frequency bias.
Balancing Authority (BA)	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
Control Area	The term used for a Balancing Authority in Western's Open Access Transmission Tariff.
CRSP	Colorado River Storage Project.
DOE	Department of Energy.
DSWR	Desert Southwest Customer Service Region.
Energy Imbalance Service	The ancillary service in which the Balancing Authority corrects hourly for the difference between a customer's energy supply and energy usage.
EIS	Environmental Impact Statement.

Acronym/term	Definition
FERC	Federal Energy Regulatory Commission.
Firm Electric Service Contracts	Contracts of the sale of long-term firm DSWR Federal energy and capacity, pursuant to the Post 1989 General Power Marketing and Allocation Criteria (Marketing Plan).
FRN	**Federal Register** notice.
FY	Fiscal Year.
Generator Imbalance Service	The ancillary service in which the Balancing Authority corrects hourly for the difference between a customer's actual generation and scheduled generation.
kW	Kilowatt. 1,000 watts.
kWh	Kilowatt-hour; the common unit of electric energy, equal to 1 kW produced or delivered for a period of 1 hour.
kW-month	Kilowatt-month of electric energy, equal to 1 kW produced and delivered for 1 month.
kW-year	Kilowatt-year. A unit of electrical capacity demanded for 8,760 hours.
Load (Total)	Network Service plus 12-month rolling average of monthly entitlements of Federal Customers plus reserved capacity for all long-term firm point-to-point transmission service.
Load-ratio share	Network Transmission Customer's 12-cp load coincident with applicable transmission project's peak, expressed as a ratio.
Load Serving Entity (LSE)	An entity within the Balancing Authority serving load.
Mill	Unit of monetary value equal to .001 of U.S. dollar; i.e., one-tenth of a cent.
Mills/kWh	Mills per kilowatt-hour.
Monthly Entitlements	Maximum capacity to be delivered each month under Firm Electric Service Contracts. Each monthly entitlement is a percentage of the seasonal contract-rate-of-delivery.
MW	Megawatt. Equal to 1,000 kW or 1,000,000 watts.
MWH	Megawatt-hour. Equal to 1,000,000 watt-hours of electric energy.
NATRR	Net Annual Transmission Revenue Requirement.
NEPA	National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).
NERC	North American Electric Reliability Corporation.
Network Integration Transmission Service (NITS)	Firm Transmission Service for the delivery of capacity and energy from designated network resources to designated network loads not using one specific path.
Open Access Same-Time Information System (OASIS)	An electronic posting system that the Transmission Service Provider maintains for transmission access data that allows all transmission customers to view the data simultaneously.
O&M	Operation and Maintenance.
OM&R	Operation, Maintenance, and Replacements.
Operating Reserve-Spinning Reserve Service	Generation capacity needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output.
Operating Reserve-Supplemental Reserve Service	Generation capacity needed to serve load in the event of a system contingency, which capacity is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generation units that are on-line but unloaded, by quick start generation, or by interruptible load.
Provisional Formula Rate	A formula rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.
Rate Brochure	A document explaining the rationale and background for the rate proposal contained in this Rate Order, dated February 22, 2011.
Reactive Supply and Voltage Control From Generation or Other Sources Service.	The ancillary service under which a Balancing Authority operates generation facilities under its control to produce or absorb reactive power to maintain voltages on all transmission facilities within acceptable limits.
Reclamation	United States Department of the Interior, Bureau of Reclamation.
Reclamation Law	A series of Federal laws, viewed as a whole that create the originating framework under which Western markets power.
Regulation and Frequency Response Service	The ancillary service under which a Balancing Authority maintains moment-by-moment load-interchange-generation balance with the Balancing Authority area, and supports interconnection frequency.
Revenue Requirement	The revenue required to recover annual expenses, such as O&M, purchased power, transmission service expenses, interest, deferred expenses, repayment of Federal investments, and other assigned costs.
RMR	Rocky Mountain Customer Service Region.
Scheduling, System Control, and Dispatch Service	The ancillary service under which a Balancing Authority sets up an arrangement for an energy interchange transaction.
Service Agreement	The initial agreement and any amendments or supplements entered into by the Transmission Customer and Western for service under the Tariff.

Acronym/term	Definition
Sub-Balancing Authority (SBA)	An area within a Balancing Authority that has a boundary metering scheme and for which an Area Control Error can be measured.
Tariff	Western Area Power Administration's revised Open Access Transmission Service Tariff, effective December 1, 2009 (FERC Docket No. NJ10–1–000).
Transmission Customer	The DSWR customer taking network or point-to-point transmission service.
Transmission Provider	An entity that administers a transmission tariff and provides transmission service to Transmission Customers under applicable transmission service agreements.
WALC	Western Area Lower Colorado Balancing Authority.
WECC	Western Electricity Coordinating Council.
Western	Western Area Power Administration.

Effective Date

The Provisional Formula Rates will take effect on the first day of the first full billing period beginning on or after October 1, 2011, and will remain in effect until September 30, 2016, pending approval by FERC on a final basis.

Public Notice and Comment

Western has followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these formula rates and schedules. The steps Western took to involve interested parties in the rate process were:

1. On September 22, 2010, Western held an informal public meeting with customers and interested parties to discuss DSWR's proposed rates for NITS and WALC Ancillary Services. Western posted all information presented at the informal public meeting, as well as answering questions asked at the meeting, on its Web site at *http://www.wapa.gov/dsw/pwrmkt/ANCSRV/ANCSRV.htm.*

2. On February 15, 2011, DSWR published a **Federal Register** notice (76 FR 8730), officially announcing the proposed NITS and WALC Ancillary Services formula rates adjustment, initiating the public consultation and comment period, announcing the Public Information and Public Comment forums and outlining procedures for public participation.

3. On February 16, 2011, Western mailed all DSWR transmission customers and interested parties a copy of the published **Federal Register** notice published on February 15, 2011,(76 FR 8730).

4. On March 10, 2011, beginning at 1 p.m., Western held its Public Information Forum at the DSWR Office at 615 South 43rd Avenue, Phoenix, Arizona. Western representatives explained the need for the formula rates adjustment in detail and answered questions.

5. On April 6, 2011, beginning at 1 p.m., Western held a Public Comment Forum at the DSWR Office, Phoenix, Arizona, to provide the public an opportunity to comment for the record. No comments were received at this forum.

6. Western received three comment letters during the consultation and comment period, which ended May 16, 2011.

All comments received have been considered in the preparation of this Rate Order.

Comments

No oral comments were received.

The following three organizations submitted written comments:

- Irrigation & Electrical Districts Association of Arizona, Phoenix, Arizona.
- Wellton-Mohawk Irrigation and Drainage District, Wellton, Arizona.
- Yuma County Water User's Association, Yuma, Arizona.

Project Description

DSWR provides Ancillary Services under the WALC. It encompasses all the power systems located in the DSWR marketing area; Boulder Canyon Project (BCP), Parker-Davis Project (P–DP), Central Arizona Project (CAP), Colorado River Storage Project (CRSP), and the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie), as well as the transmission facilities of the Salt Lake City Area Integrated Projects of the CRSP. NITS is provided on the P–DP and the AC Intertie.

P–DP

P–DP was formed by consolidating two projects, Davis Dam and Parker Dam, under terms of the Act of May 28, 1954 (68 Stat. 143). P–DP is operated in conjunction with the other Federal hydro generation projects in the Colorado River Basin. The project includes 1,541 circuit-miles of high-voltage transmission lines in Arizona, southern Nevada, and along the Colorado River in California. Power generated from the P–DP is marketed to customers in Nevada, Arizona, and California. The current methodologies to calculate rates for firm electric and transmission service have been in effect since October 1, 2008.

AC Intertie

The AC Intertie was authorized by Section 8 of the Pacific Northwest Power Marketing Act of August 31, 1964 (16 U.S.C. 837g). Western's portion of the AC Intertie consists of two parts, a northern portion and a southern portion. The southern portion is administered by Western's DSWR and is treated as a separate, stand alone project for repayment and operational purposes. It consists of a 238-mile, 345-kV line from Mead Substation (Nevada) to Liberty Substation (Arizona), a 19-mile, 230-kV line from Liberty to Westwing Substation (Arizona), a 22-mile, 230-kV line from Westwing to Pinnacle Peak Substation (Arizona), and two segments that came on line in April 1996; the 260-mile Mead-Phoenix 500-kV AC Transmission Line between Marketplace Substation (Nevada) and Perkins Substation (Arizona), and the 202-mile Mead-Adelanto 500-kV AC transmission line between Marketplace and the existing Adelanto Switching Substation in southern California. The rate schedules for firm and non-firm transmission services were placed into effect on October 1, 2007, and expire on September 30, 2012, unless superseded with new rate schedules.

BCP

Hoover Dam, authorized by the Boulder Canyon Project Act (45 Stat. 1057, December 21, 1928), sits on the Colorado River along the Arizona and Nevada border. Hoover Power Plant has 19 generating units (two for plant use) and an installed capacity of 2,078,800 kW (4,800 kW for plant use). High-voltage transmission lines and substations make it possible for consumers in southern Nevada,

Arizona, and southern California to receive power from the BCP. BCP electric service rates are adjusted annually using an existing rate formula established on April 19, 1996.

CAP

The CAP is one of three related water development projects that make up the Colorado River Basin Project. Congress authorized CAP in 1968 to improve water resources in the Colorado River Basin (43 U.S.C. 1501). The legislation also authorized Federal participation in the Navajo Generating Station, which has three coal-fired steam electric generating units for a combined capacity of approximately 2,250,000 kW. The current rate methodology for CAP firm and non-firm transmission service went into effect on January 1, 2001, and was extended through December 31, 2012.

CRSP

CRSP was authorized by the Colorado River Storage Project Act, ch. 203, 70 Stat. 105, on April 11, 1956. The project provides water-use developments for states in the Upper Basin (Colorado, New Mexico, Utah, and Wyoming) while still maintaining water deliveries to the states of the Lower Basin (Arizona, California, and Nevada) as required by the Colorado River Compact Act of 1922. The CRSP hydroelectric facility providing Ancillary Services for WALC is the Glen Canyon power plant on the Colorado River.

Network Integration Transmission Service

The formula rates for NITS were initially placed into effect by Rate Order No. WAPA–127 on November 21, 2006, and were effective through June 30, 2011. These formula rates were then extended by Rate Order No. WAPA–152 through September 30, 2013. The formula rates being placed into effect by Rate Order No. WAPA–151 will be effective on October 1, 2011, and will remain in effect until September 30, 2015, or until superseded. The formula rate for CAP is being offered under a separate Rate Order No. WAPA–124. The formula rate methodology will remain identical to those for P–DP and AC Intertie.

The formula rates for NITS for P–DP and AC Intertie are described in Rate Schedules PD–NTS3 and INT–NTS3. These formula rates will remain project-specific under Rate Order No. WAPA–151. The rates will subsequently be recalculated every year, effective October 1, based on the approved formula and updated financial and load data. DSWR will provide official notice of changes in rates to customers prior to October 1 of each year.

WALC Ancillary Services

The formula rates for WALC Ancillary Service were initially placed into effect by Rate Order No. WAPA–127 on July 1, 2006, and were effective through June 30, 2011.[3] These rate schedules were then extended by Rate Order No. WAPA–152 through September 30, 2013.[4] The rate schedules being placed into effect by Rate Order No. WAPA–151 will be effective on October 1, 2011, and will remain in effect until September 30, 2016, or until superseded.

Western will offer seven ancillary services pursuant to its Tariff. The seven ancillary services are: (1) Scheduling, system control, and dispatch service; (2) reactive supply and voltage control service; (3) regulation and frequency response service; (4) energy imbalance service; (5) spinning reserve service; (6) supplemental reserve service; and (7) generator imbalance service. The formula rates for ancillary services are designed to recover only the costs incurred for providing the service(s). The formula rates for ancillary services are described in Rate Schedules DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–SPR3, DSW–SUR3, and DSW–GI1. The rates will subsequently be recalculated every year, effective October 1, based on the approved formula and updated financial and load data. DSWR will provide official notice of changes in rates to customers prior to October 1 of each year.

Comparison of Existing and Provisional Formula Rates for Network Integration Transmission Service and WALC Ancillary Services

The following table displays a comparison of existing rates and provisional rates for FY 2012. These rates will be recalculated annually based on updated financial and load data.

FORMULA RATE COMPARISON TABLE

Class of service	Existing formula rates effective October 1, 2010 (FY 2011)	Provisional formula rates effective October 1, 2011 (FY 2012)
Network Integration Transmission Service:	Customer's Load Ratio Share times one-twelfth of the Annual Transmission Revenue Requirement.	Customer's Load Ratio Share times one-twelfth of the Annual Transmission Revenue Requirement.
P–DP	$37,912,005	$38,572,394.
AC Intertie	$27,476,836	$27,906,604.
Scheduling, System Control, and Dispatch Services DSW–SD3.	$26.85/tag Maximum cost per tag	$30.33/Schedule Maximum cost per Schedule.
Reactive Supply and Voltage Control from Generation Sources Services DSW–RS3.	$0.058/kW-month	$0.063/kW-month.
Regulation and Frequency Response Service DSW–FR3.	0.2481 Mills/kWh (Energy based)	$0.2327/kW-month (Capacity based).
Energy Imbalance Service:		
DSW–EI3.		
On-Peak Hours	+/− 0 to 1.5%; Min: 0 to 5 MW	+/− 0 to 1.5%; Min: 0 to 4 MW.
Energy within Bandwidth	100% return	100% return.
On-Peak Hours		+/− 1.5% to 7.5%; Min: 4 to 10 MW
Energy outside Bandwidth Deliveries:		
Under	110% return	110% return.
Over	90% return	90% return.
On-Peak Hours	N/A	>+/−7.5%, Min: >10MW.

[3] *See* 71 FR 36322 (June 26, 2006). FERC confirmed and approved these rates on November 21, 2006 (117 FERC ¶ 62,172).

[4] WAPA–152, Extension of Rate Order No. WAPA–127 through September 30, 2013. 76 FR 28767, May 18, 2011.

FORMULA RATE COMPARISON TABLE—Continued

Class of service	Existing formula rates effective October 1, 2010 (FY 2011)	Provisional formula rates effective October 1, 2011 (FY 2012)
Deliveries:		
Under		125% return.
Over		75% return.
Off-Peak Hours	+1.5% to −3%	+7.5% to −3%.
Deliveries:		
Under	Min: 5 MW	Min: 5 MW.
Over	Min: 2 MW	Min: 2 MW.
Energy within Bandwidth Energy outside Bandwidth.	100% return	100% return.
Deliveries:		
Under	110% return	110% return.
Over	60% return	60% return.
Generator Imbalance Service:		
DSW–GI1		
On-Peak Hours	N/A	+/− 0 to 1.5%; Min: 0 to 4 MW.
Energy within Bandwidth		100% return.
On-Peak Hours Energy outside bandwidth		+/− 1.5% to 7.5%; Min: 4 to 10 MW.
Deliveries	N/A.	
Under		110% return.
Over		90% return.
On-Peak Hours		> +/− 7.5%, Min: > 10 MW
Deliveries	N/A.	
Under		125% return.
Over		75% return.
Off-Peak Hours	N/A	+7.5% to −3%.
Deliveries:		
Under		Min: 5 MW.
Over		Min: 2 MW.
Energy within Bandwidth		100% return.
Energy outside Bandwidth		
Deliveries:		
Under		110% return.
Over		60% return.
Operating Reserves:		
Spinning Service DSW–SPR3 and Supplemental Service DSW–SUR3.	None available on long-term basis; market price, if available, on short-term basis, or on request. Western will procure at cost plus 10% administrative charge.	None available on long-term basis; market price, if available, on short-term basis, or on request. Western will procure at cost plus 10% administrative charge.

Certification of Rates

Western's Administrator certified that the Provisional Formula Rates for NITS and WALC Ancillary Services under Rate Schedules PD–NTS3, INT–NTS3, DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–SPR3, DSW–SUR3, and DSW–GI1 are the lowest possible rates consistent with sound business principles. The Provisional Formula Rates were developed following administrative policies and applicable laws.

Network Integration Transmission Service Discussion

The monthly charge for NITS will be as follows:

$$\text{Monthly Charge} = \text{Customer Load Ratio Share} \times \frac{\text{Annual Transmission Revenue Requirement}}{12}$$

The customer's load-ratio share is the ratio of its network load to the Project's Transmission System Total Load at the Project's system peak. This is calculated on a rolling 12-month basis (12 coincident peak average or 12-cp).

Network Integration Transmission Service Comments

DSWR received three comment letters during the Public Consultation and Comment Period. No comments provided related specifically to NITS. The commenters requested an extension to the public comment period, and Western responds to these comments later in this document.

WALC Ancillary Services Discussion

Pursuant to Western's Tariff, WALC will offer seven Ancillary Services. Two of these services, Scheduling, System Control and Dispatch (SSCD) Service and Reactive Supply and Voltage Control (VAR Support) from Generation or Other Sources Service, are services that the Transmission Provider is required to provide (or offer to arrange

with the Balancing Authority operator) and the Transmission Customer is required to purchase.

The other five Ancillary Services, Regulation and Frequency Response (Regulation) Service, Energy Imbalance (EI) Service, Operating Reserves—Spinning Reserve and Operating Reserve—Supplemental Reserve Service, Generator Imbalance (GI) Service, are services that the Transmission Provider is required to *offer* to provide to the Transmission Customer. The Transmission Customer is required to acquire these Ancillary Services, either from the Transmission Provider, from a third party, or by self-supply.

Formula Rate for Scheduling, System Control, and Dispatch Service

The formula for SSCD Service is as follows:

$$\text{Rate per Schedule} = \frac{\text{Annual Cost of Scheduling Personnel and Related Costs}}{\text{Number of Schedules per Year}}$$

$$\text{Rate per Schedule} = \frac{\$5{,}481{,}314}{180{,}732 \text{ Schedules}}$$

$$\text{Rate per Schedule} = \$30.33$$

Western's annual revenue requirement (numerator) for SSCD Service primarily consists of costs for scheduling and will not include costs for system control and dispatch. Those costs are contained in other rates. The denominator is the yearly total of daily schedules. This is a change from the current methodology in that WALC previously counted tags at the time of creation and any subsequent modifications where WALC is listed as a Transmission Provider and as a Balancing Authority.

Under Schedule 1 of Western's Tariff, ''this service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located.'' In cases where the Transmission Provider directly provides the service as the Control Area operator, the costs for this service are included in the respective Federal transmission rate. In cases where the Transmission Provider on the schedule is not the control area operator and the entities are not taking transmission service over the Federal transmission system in WALC, unless other arrangements are made with WALC, the SSCD rate will be applicable.

Formula Rate for Reactive Supply and Voltage Support Control Service From Generation or Other Sources Service

The formula for VAR Support Service is as follows:

$$\text{VAR Support Rate} = \frac{\text{TARRG x \% of Resource}}{\text{Load Requiring VAR Support}}$$

$$\text{VAR Support Rate} = \frac{\$3{,}253{,}180}{4{,}293{,}570 \text{ kW}}$$

VAR Support Rate = $ 0.76 / kW-year
VAR Support Rate = $ 0.063 / kW-month

Western's total annual revenue requirement (numerator) for VAR Support Service captures the percentage of annual generation costs that are used for this service. That percentage is based on the nameplate power factor for the generating units. The annual generation costs are multiplied by the complement of the power factor. The denominator is a measure of the loads requiring this service. Western uses long-term firm transmission reservation data for both CRSP and P–DP, and subtracts for those customers that provide VAR Support Service to the Balancing Authority. There is no change to the rate formula methodology.

Formula Rate for Regulation and Frequency Response Service

The formula for Regulation Service will have two different applications:

1. Load-based Assessment. The formula is as follows:

$$\text{Regulation Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation}}{\text{Load in the Balancing Authority Requiring Regulation Plus the Installed Nameplate Capacity of Intermittent Resources Serving Load in the Balancing Authority}}$$

$$\text{Regulation Rate} = \frac{\$2{,}475{,}456}{866{,}582 \text{ / kW}}$$

$$\text{Regulation Rate} = \$2.7923\text{/kW-year}$$

$$\text{Regulation Rate} = \$0.2327\text{/kW-month}$$

Western's annual revenue requirement (numerator) for Regulation Service captures the plant, operation and maintenance (O&M) costs, purchases of a regulation product, and purchases of power in support of the units' ability to regulate. The load (denominator) applies to all entities' auxiliary load (total less Federal entitlements, including behind the meter generation rating, or if available, hourly data if generation is synchronized to the system), plus the nameplate capacity of intermittent resources serving load in the WALC. Application of Regulation Service to intermittent resources serving load inside WALC is a change from the current methodology. Western retains the existing requirement for providing regulation service for non-conforming loads. A non-conforming load is defined as a single plant or site with a regulation capacity requirement of 5 MWs or greater on a recurring basis and 10 percent or greater of its average load. Regulation Service for non-conforming loads, as determined by Western, will continue to be delineated in a Service Agreement and charged an amount that includes the cost to procure the service and the additional amount required to monitor and supply the service. The denominator is a change from the existing formula rate methodology in that it was energy-based rather than capacity (load)-based.

1. Self-Provision Using Automatic Generation Control Assessment

Western allows entities with automatic or manual generation control to self-provide for all or a portion of their loads. Typically, entities with generation control are known as Sub-Balancing Authorities (SBA) and should meet all of the following criteria:

a. Have a well-defined boundary, with WALC-approved revenue-quality metering, accurate as defined by North American Electric Reliability Corporation (NERC), to include MW flow data availability at 6-second or smaller intervals.

b. Have Automatic Generation Control capability.

c. Demonstrate Regulation Service capability as determined by Western.

d. Execute a contract with the WALC BA to:

i. Provide all requested data to the WALC BA.

ii. Meet SBA Error Criteria as described below.

Self-provision is to be measured by use of the entity's 1-minute average Area Control Error (ACE) to determine the amount of self-provision. The assessment is calculated every hour and the value of ACE is used to calculate the Regulation Service charges as follows:

a. If the entity's 1-minute average ACE is ≤ 0.5 percent of the entity's hourly average load, no Regulation Service charges are assessed by WALC.

b. If the entity's 1-minute average ACE is ≥ 1.5 percent of the entity's hourly average load, WALC assesses Regulation Service charges to the entity's entire load, using the Load-based rate.

c. If the entity's 1-minute average ACE is > 0.5 percent of the entity's hourly average load, but < 1.5 percent of the entity's hourly average load, WALC assesses Regulation Service charges based on linear interpolation of zero charge and full charge, using the Load-based rate.

d. Western will monitor the entity's self-provision on a regular basis. If Western determines that the entity has not been self-regulating, Western will, upon notification, employ the load-based assessment methodology described in No. 1 above.

Alternative Arrangements

1. *Exporting Intermittent Resource Requirement:* An entity that exports the output from an intermittent generator to another balancing authority will be required to dynamically meter or dynamically schedule that resource out of WALC to another balancing authority unless arrangements, satisfactory to Western, are made for that entity to acquire this service from a third-party or self-supply (as outlined below). An intermittent generator is one that is volatile and variable due to factors beyond direct operational control and, therefore, is not dispatchable.

2. *Self- or Third-party Supply:* Western may allow an entity to supply some or all of its required regulation or contract with a third party to do so, even without well-defined boundary metering. This entity must have revenue quality metering at every load and generation point, and accuracy as defined by NERC, to include MW flow data availability at 6-second or smaller intervals. WALC will evaluate the entity's metering, telecommunications and regulating resource, as well as the required level of regulation, and determine whether the entity qualifies to self-supply under this provision. If approved, the entity is required to enter into a separate contract with Western, which will specify the terms of the self-supply agreement.

Formula Rate for Energy Imbalance Service

WALC provides EI Service using a bandwidth and penalty structure with three deviation bands as follows:

1. On-peak hours +/− 0 percent to 1.5 percent of metered load (0 to 4 MW minimum) with no penalty within bandwidth.

2. On-peak hours +/- 1.5 percent to 7.5 percent of metered load (4 to 10 MW minimum) with 110 percent return for under-deliveries and 90 percent return for over-deliveries.

3. On-peak hours >7.5 percent of metered load (>10 MW minimum) with 125 percent return for under-deliveries and 75 percent for over-deliveries.

Due to Balancing Authority operating constraints in the off-peak hours, WALC will continue to treat on-peak and off-peak hour imbalances differently. For off-peak hour imbalances, WALC is proposing to continue using the following bandwidth structure in those hours but with an expanded bandwidth for over-delivery:

Off-peak hours 7.5 percent to −3 percent of metered load (2 MW minimum for over-deliveries; 5 MW minimum for under-deliveries) with 110 percent return for under-delivery, 60 percent return for over-delivery.

For off-peak hour imbalances, WALC is proposing an imbalance and penalty structure very similar to the existing structure.

Formula Rates for Operating Reserves—Spinning and Supplemental Services

WALC has no long-term Reserves available for sale. At a customer's request, WALC may attempt to purchase and pass through the cost of Reserves, plus 10 percent administrative costs. This represents no change to the existing methodology.

Formula Rates for Generator Imbalance Service

WALC has not had a separate rate schedule or provided this service in the past. The formula rate for GI Service will be identical to that of EI Service, with the following exceptions:

1. Bandwidths will be calculated as a percentage of metered generation, since there is no load.

2. Intermittent resources are exempt from the outer bandwidth. All deviations greater than 1.5 percent of metered generation in the on-peak hours will be subject only to a 10 percent penalty.

In any hour, WALC may charge a customer a penalty for either GI Service under Rate Schedule DSW–GI1 or EI Service under Rate Schedule DSW–EI3, but not both, unless the imbalances aggravate rather than offset each other.

Comments

DSWR received three comment letters during the Public Consultation and Comment Period. The comment expressed in these letters has been paraphrased where appropriate, without compromising the meaning of the comment.

Comment: All three commenters requested a 30-day extension to the public consultation and comment period ending May 16, 2011.

Response: Western recognizes the request for an extension to the comment period. In order to make the rates effective October 1, however, Western must issue the order confirming, approving and placing the rates into effect on an interim basis. Western provided opportunities for the customers and interested parties to participate and comment within the 90-day consultation and comment period. Prior to initiation of the formal comment period, Western also held informal discussions with customers and interested parties, providing for initial consultation and comments beginning in September 2010. Western believes that these comment opportunities were sufficient, and the requesters did not provide sufficient justification of the need for an extension.

Availability of Information

All brochures, studies, comments, letters, memorandums and other documents that Western used to develop the Provisional Formula Rates are available for inspection and copying at the Desert Southwest Customer Service Region Office, located at 615 South 43rd Avenue, Phoenix, Arizona or on its Web site at *http://www.wapa.gov/dsw/pwrmkt/ancsrv/ancsrv.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE NEPA Regulations (10 CFR part 1021), Western has determined that 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.

Submission to the FERC

The Provisional Formula Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective on the first full billing period on or after October 1, 2011, formula rates for Network Integration Transmission Service and WALC Balancing Authority Ancillary Services under Rate Schedules PD–NTS3, INT–NTS3, DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–SPR3, DSW–SUR3, and DSW–GI1. By this Order, I am placing the rates into effect in less than 30 days to meet contract deadlines, to avoid financial difficulties and to provide a rate for a new service. These rate schedules shall remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute formula rates on a final basis through September 30, 2016.

Dated: September 19, 2011.

Daniel B. Poneman,
Deputy Secretary.

Network Integration Transmission Service on the Parker-Davis Project

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Parker-Davis Project (P–DP) transmission facilities.

Applicable

To Network Integration Transmission Service (Network Service) customers where capacity and energy are supplied to the P–DP transmission system from designated resources, transmitted subject to the availability of the transmission capacity, and delivered, less losses, to designated points of delivery on the P–DP system specified in the network service agreement.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by the network service agreement.

Monthly Rate

Network Service Charge: Each contractor shall be billed an amount based on the contractor's load ratio share times one-twelfth of the P–DP annual revenue requirement. The load ratio share will be determined by the contractor's coincidental peak load averaged with the coincidental peak loads of the previous 11 months divided by the average P–DP system peak for the same time period.

Revenue Requirement

The projected annual revenue requirement allocated to transmission for FY 2012 for the P–DP is $38,572,394. Based on updated financial and load data, a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

Adjustment for Ancillary Services

Network Service is offered under Western's Open Access Transmission Tariff, and contractors are responsible for all ancillary services set forth in the applicable rate schedules specified in the customer's network service agreement.

Adjustment for Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the network service agreement.

Modifications

The Desert Southwest Customer Service Region may modify the charges for Network Service upon written notice to the transmission customer. Any change to the charges to the transmission customer for Network Service shall be included in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies, and made part of the applicable network service agreement.

Network Integration Transmission Service on the Pacific Northwest-Pacific Southwest Intertie Project

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

Within the marketing area serviced by the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) transmission facilities.

Applicable

To Network Integration Transmission Service (Network Service) customers where capacity and energy are supplied to the Intertie from designated resources, transmitted subject to the availability of the transmission capacity, and delivered, less losses, to designated points of delivery on the Intertie system specified in the network service agreement.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by the network service agreement.

Monthly Rate

Network Service Charge: Each contractor shall be billed an amount based on the contractor's load ratio share times one-twelfth of the Intertie annual revenue requirement. The load ratio share will be determined by the contractor's coincidental peak load averaged with the coincidental peak loads of the previous 11 months divided by the average Intertie system peak for the same time period.

Revenue Requirement

The projected annual revenue requirement allocated to transmission for FY 2012 for the Intertie is $27,906,604. Based on updated financial and load data, a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

Adjustments for Ancillary Services

Network Service is offered under the Open Access Transmission Tariff and contractors are responsible for all ancillary services set forth in the applicable rate schedules specified in the customer's network service agreement.

Adjustments for Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the network service agreement.

Modifications

The Desert Southwest Customer Service Region may modify the charges for Network Service upon written notice to the transmission customer. Any change to the charges to the transmission customer for Network Service shall be included in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable network service agreement.

Scheduling, System Control, and Dispatch Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority (BA).

Applicable

Unless other arrangements are made with WALC, to transactions with entities not taking transmission service over the Federal transmission system in WALC, where WALC is listed as the Transmission Provider. For entities taking transmission service from Western in the WALC BA, the Scheduling, System Control, and Dispatch Service (Scheduling Service) charge is included in the transmission rate.

Character of Service

Scheduling Service is required to schedule the movement of power through, out of, within, or into the WALC BA.

Formula Rate

The charges for Scheduling Service are to be based on the following formula rate where the Rate per Schedule equals:

$$\text{Cost per Schedule} = \frac{\text{Annual Cost of Scheduling Personnel and Related Costs}}{\text{Number of daily Schedules per Year}}$$

The numerator captures the personnel costs associated with providing Scheduling Service, as well as related costs, including annual capital costs associated with providing Scheduling Service. The denominator captures the

total number of daily schedules per year.

Rate:

The rate charged for Scheduling Service is $30.33 per Schedule. This rate is based on FY 2010 financial and load data, and will be in effect October 1, 2011, through September 30, 2012. Based on updated financial and load data, a recalculated rate will go into effect on October 1 of each year during the effective rate period.

The Desert Southwest Customer Service Region's charge for Scheduling Service may be modified upon written notice to the customer, and any change to the charges for the service shall be included in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Reactive Supply and Voltage Control From Generation Sources Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority (BA).

Applicable

To all customers in the WALC BA taking transmission service under Western's Open Access Transmission Tariff. The customer must purchase this service from WALC, unless the entity has a separate generation agreement to supply Reactive Supply and Voltage Control from Generation Sources Service (Voltage Support Service) to WALC.

Character of Service

Voltage Support Service is needed to maintain transmission voltages on all transmission facilities within acceptable limits. To accomplish this, generation facilities under the control of the WALC BA are operated to produce or absorb reactive power.

Formula Rate

The charges for Voltage Support Service are based on the following formula rate:

$$\text{Voltage Svc Support Rate} = \frac{\text{Total Annual Revenue Requirement for Service}}{\text{Load Requiring VAR Support Service}}$$

The revenue requirement for the service is the sum of the service for each generation project in WALC, determined by multiplying the generation revenue requirement by one minus the power factor for the supplying plants.

The load requiring Voltage Support Service equals long-term firm transmission reservation data for both P–DP and that portion of Colorado River Storage Project (CRSP) located in WALC, and subtracts for those reservations by entities with generation agreements to supply Voltage Support Service to WALC.

Rate

The rate to be in effect October 1, 2011, through September 30, 2012, is:

Monthly: $0.063/kW-month.
Weekly: $0.015/kW-week.
Daily: $0.0021/kW-day.
Hourly: $0.0870 mills/kWh.

This rate is based on the above formula and on FY 2010 financial and load data, and will be adjusted annually as new data becomes available and will go into effect October 1 of each year. The Desert Southwest Customer Service Region (DSWR) charges for Voltage Support Service may be modified upon written notice to the customer. Any change to the charges for Voltage Support Service shall be included in a revision to the rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSWR shall charge the customer in accordance with the rate then in effect.

Regulation And Frequency Response Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Applicable

Regulation and Frequency Response Service (Regulation Service) is necessary to provide for the continuous balancing of resources, generation and interchange with load, and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation Service is accomplished by committing on-line generation whose output is raised or lowered as necessary, predominantly through the use of automatic generation control equipment, to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Lower Colorado (WALC) Balancing Authority (BA) operator. Customers (Federal transmission customers and customers on others' transmission systems within WALC) with conforming loads must purchase this service from WALC or make alternative comparable arrangements to satisfy their Regulation Service obligations. Customers with non-conforming loads will be charged differently as stated below. A non-conforming load is defined as a single plant or site with a regulation capacity requirement of 5 megawatts (MW) or greater on a recurring basis and whose capacity requirement is equal to 10 percent or greater of its average load.

The charges for Regulation Service are outlined below.

Types

There are two different applications of this Formula Rate:

1. Load-based Assessment: The rate for the load-based assessment is reflected in the ''Formula Rate'' section and is applied to entities that take regulation service from the WALC BA. This load-based rate is assessed on an entity's auxiliary load (total metered load less Federal entitlements, including behind the meter generation rating, or if available, hourly data if generation is synchronized to the system) and is also applied to the installed nameplate capacity of all intermittent generators within WALC.

2. Self-Provision Assessment: Western allows entities with automatic or manual generation control to self-provide for all or a portion of their loads. Typically, entities with generation control are known as Sub-Balancing Authorities (SBA) and should meet all of the following criteria:

a. Have a well-defined boundary, with WALC-approved revenue-quality metering, accurate as defined by NERC, to include MW flow data availability at 6-second or smaller intervals.

b. Have Automatic Generation Control capability.

c. Demonstrate Regulation Service capability.

d. Execute a contract with the WALC BA to:

i. Provide all requested data to the WALC BA.

ii. Meet SBA Error Criteria as described below.

Self-provision is measured by use of the entity's 1-minute average Area Control Error (ACE) to determine the amount of self-provision. The assessment is calculated every hour, and the value of ACE is used to calculate the Regulation Service charges as follows:

a. If the entity's 1-minute average ACE is ≤ 0.5 percent of the entity's hourly average load, no Regulation Service charges is assessed by WALC.

b. If the entity's 1-minute average ACE is ≥ 1.5 percent of the entity's hourly average load, WALC assesses Regulation Service charges to the entity's entire load, using the load-based rate.

c. If the entity's 1-minute average ACE is > 0.5 percent of the entity's hourly average load, but < 1.5 percent of the entity's hourly average load, WALC assesses Regulation Service charges based on linear interpolation of zero charge and full charge, using the load-based rate.

d. Western monitors the entity's self-provision on a regular basis. If Western determines that the entity has not been attempting to self-regulate, Western will, upon notification, employ the load-based assessment methodology described in No. 1 above.

Alternative Arrangements

Exporting Intermittent Resource Requirement: An entity that exports the output from an intermittent generator to another balancing authority will be required to dynamically meter or dynamically schedule that resource out of WALC to another balancing authority unless arrangements, satisfactory to Western, are made for that entity to acquire this service from a third-party or self-supply (as outlined below). An intermittent generator is one that is volatile and variable due to factors beyond direct operational control and, therefore, is not dispatchable.

Other Self- or Third-party Supply: Western may allow an entity to supply some or all of its required regulation or contract with a third party to do so, even without well-defined boundary metering. This entity must have revenue quality metering at every load and generation point, accuracy as defined by NERC, to include MW flow data availability at 6-second (or smaller) intervals. WALC will evaluate the entity's metering, telecommunications, and regulating resource, as well as the required level of regulation, and determine whether the entity qualifies to Self-supply under this provision. If approved, the entity is required to enter into a separate contract with Western, which will specify the terms of the self-supply agreement.

Formula Rate

$$\text{WALC Regulation Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation}}{\text{Load in the Balancing Authority Requiring Regulation Plus the Installed Nameplate of Intermittent Resources serving Load inside WALC}}$$

Rates

Load-Based Rate

The rate to be in effect October 1, 2011, through September 30, 2012, for Nos. 1 and 2, as described above in the ''Types'' section of this rate schedule is:

Monthly: $0.2327/kW-month.

Weekly: $0.0536974/kW-week.

Daily: $0.0076500/kW-day.

Hourly: $0.0003188/kWh.

This rate is based on the above formula and will be revised annually based on updated financial and load data. The above Load-Base Rate applies to conforming loads. Regulation Service for non-conforming loads, as determined by Western, must be delineated in a service agreement, and charged an amount that includes the cost to procure the service and the additional amount required to monitor and supply this service.

WALC charges for Regulation Service may be modified upon written notice to customers. Any change to the Regulation Service charges will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. Western will charge customers under the rate then in effect.

Energy Imbalance Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority (BA).

Applicable

To all customers receiving Energy Imbalance Service from the Desert Southwest Customer Service Region (DSWR) for the WALC.

Character of Service

Provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within the WALC BA. The transmission customer (Federal transmission customers and customers on non-Western transmission systems within WALC BA) must either obtain this service from WALC, or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation. Western may charge a transmission customer a penalty for either hourly energy imbalances under this Schedule DSW–EI3 or hourly generator imbalances under Rate Schedule DSW–GI1 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

Formula Rate

WALC has established a multi-tiered deviation bandwidth, based on the size of deviation and whether the deviation occurs in the on-peak or off-peak hours. For on-peak hours the deviation bands are as follows:

1. Deviations of plus or minus 1.5 percent of metered load, with a minimum of 0 to 4 MW, either over or under-delivery.

2. Deviations of plus or minus 1.5 to 7.5 percent of a customer's metered load, with a minimum of 4 to 10 MW, either over or under-delivery.

3. Deviations of greater than plus or minus 7.5 percent of metered load, with a minimum of greater than 10 MW, either over or under-delivery.

For off-peak deviations the deviation band is 7.5 percent to a negative 3 percent of metered load, with a minimum of 5 MW for under-deliveries and 2 MW for over-deliveries. Normally, there are four scenarios for Energy Imbalance Service. They are: (1) Over-delivery within the bandwidth; (2) under-delivery within the bandwidth; (3) over-delivery outside the bandwidth;

and (4) under-delivery outside the bandwidth. There are different penalties and bandwidths imbalances that occur during on-peak and off-peak hours. During periods of BA operating constraints, Western reserves the right to eliminate credits for over-deliveries.

Within the Bandwidth

For Energy Imbalance within the bandwidth for both on-peak and off-peak, settlement between the existing customer and Western will be 100 percent of the energy imbalance. In lieu of financial settlement, equal to 100 percent of a weighted index price (described below), Western, at its discretion, may accept settlement in energy.

Outside the Bandwidth

For that portion of the customer's energy imbalance that is outside the bandwidth during on-peak hours, the settlement will be as follows:

1. For deviations of plus or minus 0 to 7.5 percent of metered load, with a 0 to 10 MW minimum, the settlement is 110 percent of the energy imbalance for under-deliveries and 90 percent of the energy imbalance for over-deliveries.
2. For deviations of greater than plus or minus 7.5 percent of metered load, with a minimum exceeding 10 MW, settlement is 125 percent of the energy imbalance for under-deliveries and 75 percent for over-deliveries.

In lieu of financial settlement, Western may, at its discretion accept settlement in energy. Financial settlement will be equal to a weighted index price (described below). For on-peak deviations described above, settlement will be 110 percent of the weighted index price for under-deliveries, and 90 percent in the first tier. For on-peak deviations in the second tier, financial settlement will be equal to 125 percent of the weighted index price for under-deliveries and 75 percent of the weighted index price for over-deliveries. For deviations in the off-peak, settlements will be 110 percent of the weighted index price for under-deliveries, and 60 percent of the weighted index price for over-deliveries. For financial settlement of transactions, the index used to calculate the settlement will be the Dow Jones Palo Verde average monthly index or an index identified on Western's Open Access Same-time Information System at the beginning of each fiscal year. Settlement for the hourly deviations will occur on a monthly basis. The Energy Imbalance Service compensation may be modified upon written notice to the customer. Any change to the customer compensation for Energy Imbalance Service shall be included in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The DSWR shall charge the customer in accordance with the rate then in effect.

Operating Reserve—Spinning Reserve Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority (BA).

Applicable

To all customers receiving spinning reserve service from the Desert Southwest Customer Service Region (DSWR) for the WALC BA.

Character of Service

Spinning reserve service (Spinning Service) is needed to serve load immediately in the event of a system contingency. Spinning Service may be provided by generating units that are on-line and loaded at less than maximum output. The transmission customer must either purchase this service from the Western WALC BA, or make alternative comparable arrangements, satisfactory to Western, to meet its Spinning Service requirements.

Formula Rate

Spinning Service will not be available from DSWR resources on a long-term basis. If a customer cannot self-supply or purchase this service from another provider, Western may obtain the Spinning Service on a pass-through cost basis at market price, plus a charge that covers the cost of procuring and supplying the service. The transmission customer will be responsible for the transmission service to get Spinning Service to the designated point of delivery.

Cost for Spinning Service = market price + cost to procure service. The Operating Reserve-Spinning Reserve Service compensation may be modified upon written notice to the customer. Any change to the customer compensation for Spinning Reserve Service shall be included in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The DSWR shall charge the customer in accordance with the rate then in effect.

Operating Reserve—Supplemental Reserve Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority (BA).

Applicable

To all customers receiving supplemental reserve service from the Desert Southwest Customer Service Region (DSWR) for the WALC BA.

Character of Service

Supplemental reserve service (Supplemental Service) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load. Supplemental Service may be provided by generating units that can be synchronized to the system within 10 minutes and loaded within 30 minutes. The transmission customer must either purchase this service from the Western WALC BA, or make alternative comparable arrangements, satisfactory to Western, to meet its Supplemental Service requirements.

Formula Rate

Supplemental Service will not be available from DSWR resources on a long-term basis. If a customer cannot self-supply or purchase this service from another provider; Western may obtain the Supplemental Service on a pass-through cost basis at market price, plus a charge that covers the cost of procuring and supplying the service. The transmission customer will be responsible for the transmission service to get Supplemental Service to the designated point of delivery.

Cost for Supplemental Service = market price + cost to procure service. The Operating Reserve-Supplemental Reserve Service compensation may be modified upon written notice to the customer. Any change to the customer compensation for Supplemental Reserve Service shall be included in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The DSWR shall charge the customer in accordance with the rate then in effect.

Generator Imbalance Service

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority (BA).

Applicable

To all customers receiving Generator Imbalance Service from the Desert Southwest Customer Service Region (DSWR) for the WALC.

Character of Service

Generator Imbalance Service is provided when a difference occurs between the output of a generator located within the Transmission Provider's BA and a delivery schedule from that generator to (1) Another BA, or (2) a load within the Transmission Provider's BA over a single hour. Western will offer this service, to the extent it is feasible to do so from its own resources or from resources available to it, when Transmission Service is used to deliver energy from a generator located with its BA. The transmission customer (Federal transmission customers and customers on non-Western transmission systems within WALC) must either obtain this service from Western, or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, satisfactory to Western, to meet their Generator Imbalance Service obligation. Western may charge a transmission customer a penalty for either hourly generator imbalances under this Schedule DSW–GI1 or hourly energy imbalances under Rate Schedule DSW–EI3 for imbalances occurring during the same, but not both, unless the imbalances aggravate rather than offset each other.

Intermittent generators serving load outside WALC will be required to dynamically schedule or dynamically meter their generation to another BA unless arrangements, satisfactory to Western, are made for that entity to acquire this service from a third-party. An intermittent resource, for the limited purpose of these rate schedules is an electric generator that is not dispatchable and cannot store its fuel source, and therefore, cannot respond to changes in demand or respond to transmission security constraints.

Formula Rate

WALC has established a multi-tiered deviation bandwidth, based on the size of deviation and whether the deviation occurs in the on-peak or off-peak hours. The magnitude of all deviations will be based on metered generation. For on-peak hours the deviation bands are as follows:

1. Deviations of plus or minus 1.5 percent of the scheduled transaction, with a minimum of 0 to 4 MW;

2. Deviations of plus or minus 1.5 to 7.5 percent of the scheduled transaction, with a minimum 4 to 10 MW; and

3. Deviations of greater than plus or minus 7.5 percent of the scheduled transaction with a minimum of greater than 10 MW.

For off-peak deviations the deviation band is 7.5 percent to a negative 3 percent of the scheduled transaction, with a minimum of 5 MW for under-scheduling and 2 MW for over-scheduling. Normally, there are four scenarios for Generator Imbalance Service. They are: (1) Over-generation within the bandwidth; (2) under-generation within the bandwidth; (3) over-generation outside the bandwidth; and (4) under-generation outside the bandwidth. There are different penalties and bandwidths for imbalances that occur during on-peak and off-peak hours. During periods of BA operating constraints, Western reserves the right to eliminate credits for over deliveries. Additionally, parties who over or under-deliver may share in potential penalty costs assessed against Western for operation outside of established utility guidelines.

Within the Bandwidth

For Generator Imbalance within the bandwidth for both on-peak and off-peak, settlement will be 100 percent of the imbalance. In lieu of financial settlement, equal to 100 percent of a weighted index price (described below), Western, at its discretion, may accept settlement in energy.

Outside the Bandwidth

For that portion of the customer's generator imbalance that is outside the bandwidth during on-peak hours, the settlement will be as follows:

1. For deviations of plus or minus 0 to 7.5 percent of a scheduled transaction, with a 0 to 10 MW minimum, the settlement is 110 percent of the imbalance for under-generation and 90 percent of the energy imbalance for over-generation.

2. For deviations of greater than plus or minus 7.5 percent of a scheduled transaction, with a minimum exceeding 10 MW, settlement is 125 percent of the imbalance for under-generation and 75 percent for over-generation.

In lieu of financial settlement, Western may, at its discretion accept settlement in energy. Financial settlement will be equal to a weighted index price (described below). For on-peak deviations described above, settlement will be 110 percent of the weighted index price for under-generation and 90 percent for over-generation in the first tier. For on-peak deviations in the second tier, financial settlement will be equal to 125 percent of the weighted index price for under-generation and 75 percent of the weighted index price for over-generation. For deviations in the off-peak, settlement will be 110 percent of the weighted index price for under-deliveries and 60 percent of the weighted index price for over-deliveries.

As an exception, an intermittent resource will be exempt from the outer deviation band. All deviations greater that 1.5 percent of metered generation in the on-peak hours will be subject to a 10 percent penalty. An intermittent resource, for the limited purpose of these rate schedules, is an electric generator that is not dispatchable and cannot store its fuel source, and therefore, cannot respond to changes in demand or respond to transmission security constraints.

For financial settlement of transactions, the index used to calculate the settlement will be the Dow Jones Palo Verde average monthly index or an index identified on the Open Access Same-time Information System at the beginning of each fiscal year. Settlement for the hourly deviations will occur on a monthly basis.

The generator imbalance service compensation may be modified upon written notice to the customer. Any change to the customer compensation for Generator Imbalance Service shall be included in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The DSWR shall charge the customer in accordance with the rate then in effect.

[FR Doc. 2011–24787 Filed 9–26–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037; FRL–9472–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 27, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0037, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 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: Ryan Humrighouse, Information Exchange Services Division, Office of Information Collection (2823T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–1680; *fax number:* 202–566–1684; *e-mail address: humrighouse.ryan@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 28, 2011 (76 *FR* 37811), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2006–0037, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI 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 OEI 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: Exchange Network Grants Progress Reports (Renewal).

ICR Numbers: EPA ICR No. 2207.04, OMB Control No. 2025–0006.

ICR Status: This ICR is scheduled to expire on November 30, 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, 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: This notice announces the collection of information related to the U.S. EPA National Environmental Information Exchange Network (NEIEN) Grant Program. The EPA Office of Environmental Information provides funding to EPA's Exchange Network partners (states, territories, and Federally recognized Indian Tribes) to support the development of the NEIEN. The NEIEN is an Internet and-standards-based, secure information system that supports the electronic collection, exchange, and integration of data among its partners. Funding for the Grant Program has been provided through annual congressional appropriations for the EPA.

To enhance the quality and overall public benefit of the Network, EPA proposes to collect information from the NEIEN grantees about how they intend to ensure quality in their projects and the environmental outcomes and outputs from their projects. The proposed Quality Assurance Reporting Form is intended to provide a simple means for grant recipients to describe how quality will be addressed throughout their projects. The Quality Assurance Reporting Form is derived from guidelines provided in the NEIEN 2011 grant solicitation notice. As a stipulation of their award, grant recipients are to submit the form within ninety days of grant award.

Grantees are currently required to submit semi-annual progress reports as a stipulation of their award. In these reports, grantees outline project goals, activities required to meet these goals, and outputs and outcomes of activities to date. At the request of numerous grantees, we are proposing to offer the Progress Reporting Form as a vehicle for collecting information. This form is easier to complete than an unstructured narrative; it can be used as the semi-annual and final report form and the information returned will be of higher quality and comparable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour 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: State, tribal, or territorial environmental government offices.

Estimated Number of Respondents: 300.

Frequency of Response: Twice per year for progress reporting; annually for quality assurance reporting form.

Estimated Total Annual Hour Burden: 956.

Estimated Total Annual Cost: $37,370 in labor costs. There are no annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 223 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of grants that are currently active and the adjustments were made accordingly.

Dated: September 21, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24814 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0693; FRL–9472–4]

Human Studies Review Board (HSRB); Notification of a Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of research with human subjects.

DATES: This public meeting will be held on October 19–20, 2011, from approximately 9 a.m. to approximately 5:30 p.m. Eastern Time. Comments may be submitted on or before Wednesday, October 12, 2011.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2011–0693, by one of the following methods:

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

E-mail: ORD.Docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov for instructions.* Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0693. 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 the disclosure of which 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 electronic storage media 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 FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact Jim Downing at *telephone number:* (202) 564–2468; *fax:* (202) 564–2070; *e-mail address: downing.jim@epa.gov,* or Lu-Ann Kleibacker at *telephone number:* (202) 564–7189; *fax:* 202–564–2070; *e-mail address: kleibacker.lu-ann@epa.gov; mailing address:* Environmental Protection Agency, Office of the Science Advisor (8105R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

SUPPLEMENTARY INFORMATION: *Location:* The meeting will be held at the Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.) 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for providing public input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, ''Public Meeting,'' under subsection D. ''How May I Participate in this Meeting?'' of this notice.

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This notice might also be of special interest to participants of studies involving human subjects, or representatives of study participants or experts on community engagement. Since many entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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 ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC 20460. The hours of operation are 8:30 am to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by the first of October 2011. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/.* For questions on document availability, or if you do not have access to the Internet, consult either Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

C. What should I consider as 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.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data that you used to support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. 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.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2011–0693 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to Wednesday, October 12, 2011. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to Jim Downing or Lu-Ann Kleibacker, under **FOR FURTHER INFORMATION CONTACT**, no later than noon, Eastern Time, Wednesday, October 12, 2011, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official (DFO) to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meeting. For the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, Wednesday, October 12, 2011. You should submit your comments using the instructions in Section I., under subsection C., ''What should I consider as I prepare my comments for EPA?'' In addition, the Agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.2 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

1. *Topics for discussion.* At its meeting on October 19 and 20, 2011, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding these topics:

a. A new scenario design and associated protocol from the Antimicrobials Exposure Assessment Task Force II (AEATF–II), describing proposed research to monitor the dermal and inhalation of workers while pouring liquid antimicrobial pesticide products from both conventional and reduced-splash containers. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who pour liquid antimicrobial pesticide products from conventional and reduced-splash containers, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

b. A new scenario design and associated protocol from the Agricultural Handler Exposure Task Force (AHETF) describing proposed research to measure dermal and inhalation exposure to workers who load liquid pesticides with closed system equipment. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as

described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who load liquid pesticides with closed system equipment, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

c. The unpublished report of the completed Carroll-Loye Biological Research, Inc. study No. Mas-003 to evaluate in the field the repellent efficacy against mosquitoes of a product containing 16% para-methane-3,8-diol and 2% lemongrass oil. The protocol for this study was reviewed favorably by the HSRB at their meeting in October 2010. EPA seeks the advice of the HSRB on the scientific soundness of this completed study for use to estimate the duration of complete protection against mosquitoes provided by the tested repellent, and on whether available information supports a determination that the study was conducted in substantial compliance with subparts K and L of 40 CFR part 26.

d. A published report by *Moiemen et al.* (2010) of an intentional exposure human study measuring dermal absorption of silver from the use of nanosilver-containing wound dressings to treat major burns. EPA seeks the advice of the HSRB on the scientific soundness of this completed study for use in support of an assessment of the absorption of nanosilver particles through the skin, and on whether there is adequate information to determine that the study was conducted in substantial compliance with procedures at least as protective as those in subparts A–L of EPA's regulation at 40 CFR part 26.

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information regarding the Board's Final meeting report, will be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 21, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–24816 Filed 9–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0793; FRL–8890–4]

Receipt of Request for Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Regulations issued by EPA under section 4 of the Toxic Substances Control Act require that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-*p*-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, the regulations allow for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received a request for a waiver from these testing requirements from 3M and will accept comments on this request. EPA will publish another **Federal Register** notice on or before November 14, 2011, announcing its decisions on this request.

DATES: Comments must be received on or before October 11, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0793, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2011–0793. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0793. EPA's policy is that all comments received will be included in the 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket are listed in the docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Rebecca Edelstein, National Program Chemicals

Division, Office Pollution Prevention and Toxics (7404T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8566; e-mail address: *edelstein.rebecca@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the request for waiver. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is announcing receipt of a request for waiver from testing from 3M. EPA will accept comments on this request and will publish another **Federal Register** notice on or before November 14, 2011, announcing its decisions on this request. See 40 CFR 766.32(c).

B. What is the Agency's authority for taking this action?

Under 40 CFR part 766, EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs. Under 40 CFR 766.32(a)(2)(i), a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms (kg) or less per year, and only for research and development purposes.

Under 40 CFR 766.32(b), a request for a waiver must be made 60 days before resumption of manufacture or importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987.

On September 14, 2011, EPA received a waiver request from 3M under 40 CFR 766.32(a)(2)(i). The request indicates that 3M intends to import tetrabromobisphenol A (CASRN 79–94–7), a chemical substance subject to testing under 40 CFR part 766, as part of an experimental formulation for research and development purposes. 3M will import less than 100 kg of tetrabromobisphenol A.

List of Subjects

Environmental protection, Dibenzofurans, Dioxins, Hazardous substances, Tetrabromobisphenol A.

Dated: September 22, 2011.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–24870 Filed 9–23–11; 11:15 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Clover Leaf Financial Corp.,* Edwardsville, Illinois; to become a bank holding company through the conversion of First Clover Leaf Bank, Edwardsville, Illinois, from a federally chartered savings bank to a state chartered commercial bank.

Board of Governors of the Federal Reserve System.

Dated: September 22, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–24753 Filed 9–26–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-day notice]

Agency Information Collection Request. 30 Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: The Children's Health Insurance Program Reauthorization Act (CHIPRA) 10–State Evaluation (New)—OMB No. 0990–NEW—Assistant Secretary Planning and Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting the Office of Management and Budget (OMB) approval on a new collection to provide the federal government with new and detailed insights into how the Children's Health Insurance Program (CHIP) has evolved since its early years, what impacts on children's coverage and access to care have occurred, and what new issues have arisen as a result of policy changes related to CHIPRA and the Patient Protection and Affordable Care Act (The Affordable Care Act) of 2010 (Pub. L. 111–148). The evaluation will address numerous key questions regarding the structure and impact of CHIP and Medicaid programs for children. To answer these questions, ASPE will draw on three new primary data collection efforts, including a survey of selected CHIP enrollees and disenrollees in 10 states (and Medicaid enrollees and disenrollees in 3 of these states), qualitative case studies in the 10 states, and a survey of State Program Administrators in all 50 States and the District of Columbia. This current request seeks clearance for the first two information collections; ASPE will seek clearance for the third information collection at a later date. All data collection will take place one time only over a three year period. The survey component includes a sample of children in 10 selected states, recently enrolled or disenrolled in CHIP or Medicaid. Survey data will be collected using computer-assisted telephone interviewing with an in-person follow-up. The qualitative case studies will include site visit interviews with CHIP and Medicaid administrators and public and child health stakeholders, plus focus groups with parents or family members of CHIP enrollees.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Survey of CHIP Enrollees and Disenrollees.	CHIP enrollees and disenrollees	15,000	1	30/60	7,500
Survey of Medicaid Enrollees and Disenrollees.	Medicaid enrollees and disenrollees	4,500	1	30/60	2,250
Site Visits	CHIP and Medicaid personnel—1 ...	300	1	1	300
Focus Groups	Parents and other family members of. children—2	80	1	2	160
Total Burden	.....	.....	.....	.....	10,210

Keith Tucker,

Paperwork Reduction Act Clearance Officer, Office of the Secretary.

[FR Doc. 2011–24721 Filed 9–26–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Sandia National Laboratories, Albuquerque, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 29, 2011, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area at the Sandia National Laboratories in Albuquerque, New Mexico, from January 1, 1949 through December 31, 1962, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on September 9, 2011, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on September 9, 2011, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–24751 Filed 9–26–11; 8:45 am]

BILLING CODE 4163–19–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 11½%, as fixed by the Secretary of the Treasury, is certified for the quarter ended June 30, 2011. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: September 7, 2011.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2011–24778 Filed 9–26–11; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–RFA–TP10–1001]

Notice of Intent To Award Affordable Care Act (ACA) Funding

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

Overview Information

Notice of Intent to Award Affordable Care Act (ACA) funding to 7 Preparedness and Emergency Response Learning Centers (PERLC). This award was proposed in the grantees' Fiscal Year (FY) 2011 non-Competing Continuation applications under Funding Opportunity Announcement CDC–RFA–TP10–1001, ''Preparedness and Emergency Response Learning Centers (PERLC).''

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the following 7 grantees: Columbia University Mailman School of Public Health, New York, NY; Johns Hopkins University, Baltimore, MD, Texas A&M School of Rural Public Health, College Station, TX; University at Albany SUNY School of Public Health, Albany, NY; University of Oklahoma College of Public Health, Oklahoma City, OK; University of South Florida College of Public Health, Tampa, FL.

The purpose of the PERLC program is to develop, deliver, and evaluate core competency-based training and education that target the public health workforce, address the public health preparedness and response needs of state, local, and tribal public health authorities and emphasize essential public health security strategies.

These activities are proposed by the above mentioned grantees in their FY 2011 application submitted under Funding Opportunity Announcement CDC–RFA–TP10–1001, ''Preparedness and Emergency Response Learning Centers (PERLC),'' Catalogue of Federal Domestic Assistance Number (CFDA): 93.069.

Approximately $5,000,000 in ACA funding will be awarded to the grantee for sustaining approved program activities. Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Section 4002 (42 U.S.C. 300u–11) (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published Funding Opportunity Announcement of CDC–RFA–TP10–1001:

Authority: Sections 311 and 317(k)(2) of the Public Health Service Act, [42 U. S. C. Section 243 and 247b(k)(2)] as amended, Patient Protection and Affordable Care Act (ACA), Section 4002 (42 U.S.C. 300u–11). CFDA #: 93.606 (Affordable Care Act—Preparedness and Emergency Response Learning Centers).

Award Information

Type of Award: Non-Competing Continuation Cooperative Agreement.

Approximate Total Current Fiscal Year ACA Funding: $5,000,000.

Anticipated Number of Awards: 7.

Fiscal Year Funds: 2011.

Anticipated Award Date: September 30, 2011.

Application Selection Process

Funding will be awarded to applicant based on documentation and results from successful past performance review.

Funding Authority

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity Announcement CDC–RFA–TP10–1001. The revised funding authority language will read:

This program is authorized under the Sections 311 and 317(k)(2) of the Public Health Service Act, [42 U. S. C. 243 and 247b(k)(2)] as amended, Patient Protection and Affordable Care Act (ACA), Section 4002 (42 U.S.C. 300u–11).

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT: Joan P. Cioffi, PhD, Associate Director, Learning Office and Program Official for Preparedness and Emergency Response Learning Centers (PERLC), Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention, telephone 404–639–0641. *jcioffi@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to ''provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.'' ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to sustain their existing to provide for a national investment in prevention and public health programs. Further, The Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: August 16, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–24750 Filed 9–26–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding, RFA–TP–08–001

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

Overview Information

Notice of Intent to award Affordable Care Act (ACA) funding to Preparedness and Emergency Response Research Centers (PERRCs). This award is proposed for the grantees' Fiscal Year (FY) 2011 non-competing continuation application under Funding Opportunity Announcement RFA–TP–08–001, ''Preparedness and Emergency Response Research Centers: A Public Health Systems Approach.''

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the following 4 Preparedness and Emergency Response Research Center (PERRCs) grantees: the University of North Carolina in Chapel Hill, NC; the University of Minnesota in Minneapolis, MN; the University of California in Berkeley; and the University of California in Los Angeles, CA.

The purpose of the PERRC program is to conduct public health systems research to strengthen preparedness and response capabilities at the national, state, local, and tribal levels for preventing morbidity and mortality from threats to the public's health such as infectious disease outbreaks, and man-made and natural disasters.

These activities are proposed by the above mentioned grantees in their FY 2011 application for continuation submitted under Funding Opportunity Announcement RFA–TP–08–001, ''Preparedness and Emergency Response Research Centers: A Public Health Systems Approach,'' Catalogue of Federal Domestic Assistance Number (CFDA): 93.061 Approximately $5,000,000 in ACA funding will be awarded to these grantees for sustaining approved program activities. Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Section 4002 (42 U.S.C. 300u–11) (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published Funding Opportunity Announcement of RFA–TP–08–001:

Authority: Sections 311 and 317 (k)(2) of the Public Health Service Act, [42 U. S. C. Section 243 and 247b(k)(2)] as amended, Patient Protection and Affordable Care Act (ACA), Section 4002 (42 U.S.C. 300u–11).

CFDA #: 93.607 (Affordable Care Act—Preparedness and Emergency Response Research Centers: A Public Health Systems Approach)

Award Information

Type of Award: Non-Competing Continuation Cooperative Agreement.

Approximate Total Current Fiscal Year ACA Funding: $5,000,000.

Anticipated Number of Awards: 4.

Fiscal Year Funds: 2011 .

Anticipated Award Date: September 30, 2011.

Application Selection Process

Funding will be awarded to the applicants based on the following criteria from the funding opportunity announcement:

- Accomplishments reflected in the progress report of the continuation application that indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress is being demonstrated. The report should contain progress in core activities, including a report on advisory committee meeting(s), activities, *etc.,* and progress in individual research projects.
- Objectives for the new budget period are realistic, specific, and measurable. Methods described will clearly lead to achievement of these objectives. An evaluation plan that will allow management to monitor whether the methods are effective.
- Any impediments to progress are described, *e.g.,* milestones that are deficient or deferred are fully explained, and the corrective action taken to address the impediment is described including specific information on revised dates of completion of the milestones impacted.

A budget request that is clearly explained, adequately justified, reasonable and consistent with the intended use of program project grant funds.

Funding Authority

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity Announcement RFA–TP–08–001. The revised funding authority language will read:

—This program is authorized under the Sections 311 and 317 (k)(2) of the Public Health Service Act, [42 U.S.C. Section 243 and 247b(k)(2)] as amended, Patient Protection and Affordable Care Act (ACA), Section 4002 (42 U.S.C. 300u–11).

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT: Mildred Williams-Johnson, PhD., Director, Extramural Research Program Office, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention,

telephone 770–488–8806, *MWilliams-Johnson@cdc.gov*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to ''provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.'' ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to sustain their existing to provide for a national investment in prevention and public health programs. Further, The Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: September 16, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–24747 Filed 9–26–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0672]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reprocessed single-use device labeling.

DATES: Submit either electronic or written comments on the collection of information by November 28, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices (OMB Control Number 0910–0577)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. Section 301 of the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250) amended section 502 of the FD&C Act to add section 502(u) to require devices (both new and reprocessed) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. Thus, the name for this information collection activity has been changed to more accurately describe the information collection content.

Section 2(c) of the Medical Device User Fee Stabilization Act of 2005 (Pub. L. 109–43) amends section 502(u) of the FD&C Act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Under the amended provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol, in a prominent and conspicuous manner on the device or attachment to the device. If the original

SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse may identify itself using a detachable label that is intended to be affixed to the patient record.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

FD&C Act Section	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
502(u)	10	100	1,000	0.1	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The requirements of section 502(u) of the FD&C Act impose a minimal burden on industry. This section of the FD&C Act only requires the manufacturer, packer, or distributor of a device to include their name and address on the labeling of a device. This information is readily available to the establishment and easily supplied. From its registration and premarket submission database, FDA estimates that there are 10 establishments that distribute approximately 1,000 reprocessed SUDs. Each response is anticipated to take 0.1 hours resulting in a total burden to industry of 100 hours.

Dated: September 22, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–24788 Filed 9–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0108]

Guidance for Industry on User Fee Waivers, Reductions, and Refunds for Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''User Fee Waivers, Reductions, and Refunds for Drug and Biological Products.'' This guidance provides recommendations to applicants considering whether to request a waiver or reduction in user fees. This guidance is a revision of the draft guidance entitled ''Draft Interim Guidance Document for Waivers of and Reductions in User Fees,'' issued July 16, 1993.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on this guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Michael Jones, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6216, Silver Spring, MD 20993–0002, 301–796–3602; or

Stephen Ripley, Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''User Fee Waivers, Reductions, and Refunds for Drug and Biological Products.'' This guidance provides recommendations for applicants planning to request waivers or reductions in user fees assessed under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379g and 379h, respectively). This guidance describes the types of waivers and reductions permitted under the user fee provisions of the FD&C Act and the procedures for submitting requests for waivers or reductions and requests for reconsideration and appeal. The guidance also provides clarification on related issues such as user fee exemptions for orphan drugs.

In the **Federal Register** of March 14, 2011 (76 FR 13629), FDA announced the availability of a revised draft guidance entitled ''User Fee Waivers, Reductions, and Refunds for Drug and Biological Products.'' The notice gave interested persons the opportunity to comment by June 13, 2011. We received no comments on the revised draft guidance; however, we have made minor editorial changes and a small clarification to the guidance document.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on user fee waivers and reductions for drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0639. The guidance also refers to collections of information for filling out and submitting Form FDA 3397 (Prescription Drug User Fee Coversheet), previously approved under OMB control number 0910–0297, and collections of information associated with new drug applications or biologics license applications approved under OMB control numbers 0910–0001 and 0910–0338, respectively.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, or at *http://www.regulations.gov.*

Dated: September 21, 2001.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24739 Filed 9–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Healthy Communities Study: How Communities Shape Children's Health (HCS)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 17, 2011, Pages 35452–3 and allowed 60 days for public comment. Three (3) comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Healthy Communities Study: How Communities Shape Children's Health (HCS). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The HCS will address the need for a cross-cutting national study of community programs and policies and their relationship to childhood obesity. The HCS is an observational study of communities conducted over five years that aims to (1) Determine the associations between community programs/policies and Body Mass Index (BMI), diet, and physical activity in children; and (2) identify the community, family, and child factors that modify or mediate the associations between community programs/policies and BMI, diet, and physical activity in children. A total of 279 communities and over 23,000 children and their parents will be part of the HCS over the five-year study. A HCS community is defined as a high school catchment area and the age range of children is 3–15 years upon entry into the study. The study examines quantitative and qualitative information obtained from community-based initiatives; community characteristics (*e.g.,* school environment); measurements of children's physical activity levels and dietary practices; and children's and parents' BMIs. Results from the Healthy Communities Study may influence the future development and funding of policies and programs to reduce childhood obesity. Furthermore, HCS results will be published in scientific journals and will be used for the development of future research initiatives targeting childhood obesity. *Frequency of Response:* Varies by participant type from once to 2.74 times. *Affected Public:* Families or households; businesses, other for-profit, and non-profit. *Type of Respondents:* Parents, children, community key informants (who have knowledge about community programs/policies related to healthy nutrition, physical activity, and healthy weight of children), food service personnel, physical education instructors, state health department employees, and physicians or medical secretaries. The annual reporting burden is as follows: *Estimated number of respondents:* 247,619; *Estimated Number of Responses per Respondent:* 1.1; *Average (Annual) Burden Hours per Response:* 0.12; and *Estimated Total Burden Hours Requested:* 33,144. The annualized cost to respondents is estimated at $434,789. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents *	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested *
Parents/Caregivers (screening)	169,650	1	0.17	9,614
Parents/Caregivers	20,358	1.46	1.14	11,295
Second Parents/Caregivers	10,179	1	0.12	407
Parents/Caregivers who refuse to participate	2,410	1	0.17	137
Children	20,358	1.46	0.78	7,728
Key Informants (screening)	4,820	1	0.08	129
Key Informants	3,615	2.74	0.85	2,806
Food Service Personnel	964	1	0.42	135
Physical Education Instructors	964	1	0.25	80
State Health Department employees	50	1	0.30	5
Physicians/medical secretaries	14,251	1	0.17	808
Total	247,619	.....	.....	33,144

* Estimated for first three years of the five-year study.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments contact: Dr. Sonia Arteaga, NIH, NHLBI, 6701 Rockledge Drive, MSC 7936, Bethesda, MD 20892–7936, or call non-toll free number (301) 435–0377 or e-mail your request, including your address to: *hcs@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 21, 2011.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

Michael S. Lauer,

Director, DCVS, National Institutes of Health.

[FR Doc. 2011–24837 Filed 9–26–11; 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 Initial Review Group, Health, Behavior, and Context Subcommittee.

Date: October 17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, 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, 301–435–8382, *hindialm@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: September 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24855 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic Research Enhancement Award (Parent R15).

Date: October 11–12, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rebecca Henry, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301–435–1717, *henryrr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pulmonary Fibrosis and Hypertension.

Date: October 12–13, 2011.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Lung Development and Injury.

Date: October 18–19, 2011.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 2011

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24841 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Training and Education.

Date: October 20–21, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Studies of CAM Therapies.

Date: November 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, National Center for Complementary, and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24840 Filed 9–26–11; 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 Initial Review Group, Pediatrics Subcommittee.

Date: October 17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, 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, 301–496–1487, *anandr@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: September 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24804 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI—Mentored Patient-Oriented Research Career Development Award.

Date: October 19–20, 2011.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Stephanie J Webb, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24847 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Systems Biology of HIV/AIDS and Substance Use—RFA DA12–009.

Date: November 22, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Ranga Srinivas, PhD, Chief, Extramural Project Review Branch, EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research

Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: September 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24850 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, NIAAA Member Conflict Application Review.

Date: October 26, 2011.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard A Rippe, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: September 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24845 Filed 9–26–11; 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 Initial Review Group, Reproduction, Andrology, and Gynecology Subcommittee.

Date: October 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

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, Rockville, MD 20852, 301–435–2717, *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: September 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24851 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as paten table 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 Center for Research Resources Special Emphasis Panel, CG Meeting 1.

Date: October 26–27, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd, Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

Name of Committee: National Center for Research Resources Special Emphasis Panel, CG Meeting 2.

Date: October 26–27, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd, Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Veterinarian Career Enhancement, K18.

Date: November 2–3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, 1068, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, 6701

Democracy Blvd. Room 1068, Bethesda, MD 20892, 301–435–0965, *slice@mainlining*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: September 21, 2011.

Jennifer S. Path,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24848 Filed 9–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on October 13, 2011 from 9 a.m. to 2:30 p.m. E.D.T. via teleconference.

The Board will discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of DTAB members may be obtained as soon as possible after the meeting by accessing the SAMHSA Advisory Committees' Web site, *http://www.nac.samhsa.gov/DTAB/meetings.aspx,* or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: October 13, 2011 from 9 a.m. to 2:30 p.m. E.D.T.: Closed.

Place: SAMHSA Office Building, 1 Choke Cherry Road, Rockville, Maryland 20857.

Contact: Janine Denis Cook, PhD, Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 2–1045, Rockville, Maryland 20857, *Telephone:* 240–276–2600, *Fax:* 240–276–2610, *E-mail: janine.cook@samhsa.hhs.gov.*

Janine Denis Cook,

Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2011–24749 Filed 9–26–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–600; Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form N–600, Application for Certificate of Citizenship; OMB Control No. 1615–0057.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 28, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *uscisfrcomment@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0057 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the 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 an existing information collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship .

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information on Form N–600 to make a determination that the citizenship eligibility requirements and conditions are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 57,000 responses at 1.6 hours (1 hour and 36 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 91,200 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*. We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: September 21, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–24725 Filed 9–26–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Agency Information Collection Activities; Vessel Entrance or Clearance Statement

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

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information: 1651–0019.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Vessel Entrance or Clearance Statement (CBP Form 1300). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 39114) on July 5, 2011, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 27, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Abstract: CBP Form 1300, Vessel Entrance or Clearance Statement, is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports. The form allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects detailed information on the vessel, cargo, purpose of entrance, certificate numbers and expiration for various certificates. It also serves as a record of fees and tonnage tax payments in order to prevent overpayments. CBP Form 1300 was developed through agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. The form was developed as a single form to replace the numerous other forms used by various countries for the entrance and clearance of vessels. CBP Form 1300 is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR 4.7–4.9. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_1300.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 22.

Estimated Total Annual Responses: 264,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 132,000.

Dated: September 22, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–24786 Filed 9–26–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–97]

Notice of Submission of Proposed Information Collection to OMB Housing Choice Voucher Program Administrative Fee Study Pretest

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Housing Choice Voucher (HCV) program is the federal government's largest low-income housing assistance program. As of 2010, the Housing Choice Voucher program serves more than 2 million households, at a total subsidy cost of $18.2 billion per year. The HCV program is administered federally by the U.S. Department of Housing and Urban Development and locally by approximately 2,400 local, state, and regional housing agencies, known collectively as public housing agencies (PHAs). Funding for the HCV program is provided entirely by the federal government. The funding that PHAs receive includes the housing subsidy itself, plus administrative fees to cover the costs of running the

program. When the voucher program was first implemented in the 1970s, the system for reimbursing PHAs for the costs of program administration was loosely based on empirical evidence. Over time, however, the system for estimating and allocating fees has become more complex and—in some ways—more arbitrary, as HUD and Congress have tried to balance fairness with cost savings, while trying to avoid large year-to-year swings in funding for PHA staffs. The Housing Choice Voucher Program Administrative Fee Study is designed to evaluate the amount of funding needed to administer the voucher program based on direct measurement of the work actually performed by voucher administrators. The study will measure and identify the tasks performed by PHA staff to meet program requirements, to assist voucher holders in finding and renting suitable housing in a timely way, and to ensure that a broad range of affordable rental housing throughout the community is available to voucher families. The study will identify the costs involved in each task, including salaries, benefits, and overhead. Ultimately, the findings of the study will be used to inform the development of a new formula for allocating HCV program administrative fees.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0267) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Choice Voucher Program Administrative Fee Study Pretest.

OMB Approval Number: 2528–0267.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The Housing Choice Voucher (HCV) program is the federal government's largest low-income housing assistance program. As of 2010, the Housing Choice Voucher program serves more than 2 million households, at a total subsidy cost of $18.2 billion per year. The HCV program is administered federally by the U.S. Department of Housing and Urban Development and locally by approximately 2,400 local, state, and regional housing agencies, known collectively as public housing agencies (PHAs). Funding for the HCV program is provided entirely by the federal government. The funding that PHAs receive includes the housing subsidy itself, plus administrative fees to cover the costs of running the program. When the voucher program was first implemented in the 1970s, the system for reimbursing PHAs for the costs of program administration was loosely based on empirical evidence. Over time, however, the system for estimating and allocating fees has become more complex and—in some ways—more arbitrary, as HUD and Congress have tried to balance fairness with cost savings, while trying to avoid large year-to-year swings in funding for PHA staffs. The Housing Choice Voucher Program Administrative Fee Study is designed to evaluate the amount of funding needed to administer the voucher program based on direct measurement of the work actually performed by voucher administrators. The study will measure and identify the tasks performed by PHA staff to meet program requirements, to assist voucher holders in finding and renting suitable housing in a timely way, and to ensure that a broad range of affordable rental housing throughout the community is available to voucher families. The study will identify the costs involved in each task, including salaries, benefits, and overhead. Ultimately, the findings of the study will be used to inform the development of a new formula for allocating HCV program administrative fees.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12	294		0.348		1,248

Total Estimated Burden Hours: 1,248.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 22, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24813 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–92]

Notice of Submission of Proposed Information Collection to OMB Budget-Based Rent Increase

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owners of certain cooperative and subsidized rental projects are required to submit a Budget Worksheet when requesting rent increases. HUD Field Office's review and evaluate the amount and reasonableness of the requested increase.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0324) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Budget-Based Rent Increase.

OMB Approval Number: 2502–0324.

Form Number: HUD–92547–A.

Description of the Need for the Information and its Proposed Use: Owners of certain cooperative and subsidized rental projects are required to submit a Budget Worksheet when requesting rent increases. HUD Field Office's review and evaluate the amount and reasonableness of the requested increase.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	12,218	1		5	61,090

Total Estimated Burden Hours: 61,090.

Status: Extension without change currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *September 19, 2011.*

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24854 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–93]

Notice of Submission of Proposed Information Collection to OMB Annual Adjustment Factors (AAF) Rent Increase Requirement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owners of project-based section 8 contracts that utilize the AAF as the method of rent adjustment provide this information which is necessary to determine whether or not the subject properties' rents are to be adjusted and, if so, the amount of the adjustment.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0507) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov; fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at Colette.*Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Annual Adjustment Factors (AAF) Rent Increase Requirement.

OMB Approval Number: 2502–0507.

Form Numbers: HUD–92273–S8, HUD 92273s8 Instructions.

Description of the Need for the Information and its Proposed Use: Owners of project-based section 8 contracts that utilize the AAF as the method of rent adjustment provide this information which is necessary to determine whether or not the subject properties' rents are to be adjusted and, if so, the amount of the adjustment.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	4,287	0.1427		1.5	918

Total Estimated Burden Hours: 918.

Status: Revision of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 19, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24852 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–94]

Notice of Proposed Information Collection: Comment Request; Information Request Regarding Assistance: Certification of Consistency and Nexus Between Activities Proposed by the Applicant With Livability Principles Advanced in Preferred Sustainability Status Communities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* November 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410; telephone: 202–402–4637, (this is not a toll-free number) or e-mail Ms. Dorf at *Barbara. Dorf@hud.gov.* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Collette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Collete.Pollard@HUD.gov;* or Dorthera Yorkshire, Senior Program Analyst Office of Departmental Grants Management and Oversight at *Dorthera.Yorkshire@hud.gov* for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Certification of Consistency and Nexus between Activities Proposed by the Applicant with Livability Principles Advanced in Preferred Sustainability Status Communities.

OMB Control Number, if applicable: 2535–0121.

Description of the need for the information and proposed use: The proposed form, an attachment to HUD Federal Financial Assistance applications, requests applicants to obtain a certification from the Designated Point of Contact for designated Preferred Sustainability Status Community using form HUD–XXXXX which verifies that the applicant has met the above criteria. The form will certify the nexus between the proposed activities of the applicant and the Livability Principles as they are being advanced in the Preferred Sustainability Status Communities. If the applicant is from the agency that holds Point of Contact status in a particular Preferred Sustainability Status Community, it must be certified by the appropriate HUD Regional Administrator in consultation with field staff.

Agency form numbers, if applicable: HUD–2995.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total time needed to complete the form is less than ten minutes; number of respondents is 11,000; frequency of response is on the occasion of application submission. The total report burden is 1100 hours.

Status of the proposed information collection: Approval of information for HUD's discretionary program.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 19, 2011.

Peter J. Grace,

Director, Office of Strategic Planning and Management, Advisor to the Secretary for Management.

[FR Doc. 2011–24820 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–91]

Notice of Submission of Proposed Information Collection to OMB Interstate Land Sales Full Disclosure Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.,* requires developers to register subdivisions of 100 or more non-exempt lots with HUD. The developer must give each purchaser a property report that meets HUD's requirements before the purchaser signs the sales contract or agreement for sale or lease.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0243) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Interstate Land Sales Full Disclosure Requirements.

OMB Approval Number: 2502–0243.

Form Numbers: HUD 762.

Description of the Need for the Information and its Proposed Use: The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.,* requires developers to register subdivisions of 100 or more non-exempt lots with HUD. The developer must give each purchaser a property report that meets HUD's requirements before the purchaser signs the sales contract or agreement for sale or lease.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	Burden hours
Reporting Burden	1,011	112.756		0.3039	34,653

Total Estimated Burden Hours: 34,653.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 19, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24831 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–90]

Notice of Submission of Proposed Information Collection to OMB Energy Innovation Fund—Multifamily Energy Pilot Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from applicants for a new pilot program seeking innovative proposals for increasing the energy efficiency of Multifamily Housing.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0142) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette. Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Marketing Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: HUD is evaluating alternative survey methodologies to collect gross rent data for specific areas in a relatively fast and accurate way that may be used to estimate and update Section 8 Fair Market Rents (FMRs) in areas where FMRs are believed to be incorrect and data from the American Community Survey is not available at the local level. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use. Random digit dialing (RDD) telephone surveys have been used for many years to adjust FMRs and will be evaluated for continued use. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. Cell phone surveys will be incorporated into this methodology and comprise roughly one-third of the sample. In addition HUD will collect survey data using web-based and mail systems. Initially, as the methodology is being refined, HUD will conduct surveys of up to 4 individual FMR areas in a year to test the accuracy of their FMRs. Up to 5 individual FMR area will be surveyed after the new methodology is determined.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	8572	1		0.0702	602

Total Estimated Burden Hours: 602.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 22, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24834 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–95]

Notice of Submission of Proposed Information Collection to OMB Transformation Initiative: Rent Reform Demonstration Small Grant Research Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

In Fiscal Year 2012 an as yet unknown amount of funding will be made available for this effort. The program is approved by HUD's authority and administered under the Transformation Initiative Account. The purpose of the effort is to provide funding to support research that will build upon a larger social experiment funded by HUD. The funds will be made available in the form of cooperative agreements. Awardees will be selected through a competitive process, announced through a Notice of Funding Availability (NOFA). Applicants are required to submit certain information as part of their application for assistance. Awardees are required to prepare a quarterly status report so that HUD can monitor their progress in completion of their research.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Transformation Initiative: Rent Reform Demonstration Small Grant Research Program.

OMB Approval Number: 2528–Pending

Form Numbers: HUD–96011, SF–LLL, HUD–2993, HUD–424–CB, SF–424, and HUD–2880.

Description of the Need For the Information and its Proposed Use: In Fiscal Year 2012 an as yet unknown amount of funding will be made available for this effort. The program is approved by HUD's authority and administered under the Transformation Initiative Account. The purpose of the effort is to provide funding to support research that will build upon a larger

social experiment funded by HUD. The funds will be made available in the form of cooperative agreements. Awardees will be selected through a competitive process, announced through a Notice of Funding Availability (NOFA). Applicants are required to submit certain information as part of their application for assistance. Awardees are required to prepare a quarterly status report so that HUD can monitor their progress in completion of their research.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20	1		42		840

Total Estimated Burden Hours: 840.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 21, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24817 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–96]

Notice of Submission of Proposed Information Collection to OMB Transformation Initiative: Family Self-Sufficiency Program Demonstration Small Grants Research Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

In Fiscal Year 2012 an as yet unknown amount of funding will be made available for this effort. The program is approved by HUD's authority and administered under the Transformation Initiative Account. The purpose of the effort is to provide funding to support research that will build upon a larger social experiment funded by HUD. The funds will be made available in the form of cooperative agreements. Awardees will be selected through a competitive process, announced through a Notice of Funding Availability (NOFA). Applicants are required to submit certain information as part of their application for assistance. Awardees are required to prepare a quarterly status report so that HUD can monitor their progress in completion of their research.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528—Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov; fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Transformation Initiative: Family Self-Sufficiency Program Demonstration Small Grants Research Program.

OMB Approval Number: 2528—Pending.

Form Numbers: SF–424, SF–LLL, HUD–424–CB, HUD–96011, HUD–2993 and HUD–2880.

Description of the Need for the Information and its Proposed Use: In Fiscal Year 2012 an as yet unknown amount of funding will be made available for this effort. The program is approved by HUD's authority and administered under the Transformation Initiative Account. The purpose of the effort is to provide funding to support research that will build upon a larger social experiment funded by HUD. The funds will be made available in the form of cooperative agreements. Awardees will be selected through a competitive process, announced through a Notice of Funding Availability (NOFA). Applicants are required to submit certain information as part of their application for assistance. Awardees are required to prepare a quarterly status report so that HUD can monitor their progress in completion of their research.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	20	2.5		0.0198		1,010

Total Estimated Burden Hours: 1,010.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 21, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–24815 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5415–FA–21]

Announcement of Funding Awards Capital Fund Education and Training Community Facilities (CFCF) Program Fiscal Year 2010

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2010 (FY2010) Notice of Funding Availability (NOFA) for the Capital Fund Education and Training Community Facilities (CFCF) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the CFCF program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the CFCF Program awards, contact Jeffrey Riddel, Director, Office of Capital Improvements, 451 7th Street, SW., Room 4130, Washington, DC 20410, telephone number 202–402–7378. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The CFCF program provides grants to Public Housing Agencies (PHAs) to develop facilities to provide early childhood education adult education and/or job training programs for public housing residents. More specifically, in accordance with Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (1937 Act), and the Department of Housing and Urban Development (HUD) Fiscal Year 2010 Appropriations Act (Pub. L. 111–117), approved December 16, 2009), the CFCF program provides grants to PHAs to (1) Construct new community facilities; (2) purchase or acquire facilities; or (3) rehabilitate existing facilities to be used as education and training community facilities by PHA residents. The facilities are for the predominant use of PHA residents; however, non-public housing residents may participate.

The FY2010 awards announced in this Notice were selected for funding in a competition posted on HUD's Web site on October 8, 2010. Applications were scored and selected for funding based on the selection criteria in that NOFA, which made approximately $35 million available for distribution.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 12 awards made under the competition in Appendix A to this notice.

Dated: September 21, 2011.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

LIST OF CAPITAL FUND EDUCATION AND TRAINING COMMUNITY FACILITIES (CFCF) PROGRAM NOFA GRANTEES FOR FISCAL YEAR 2010

Name/address of applicant	Amount funded	Activity funded	Project description
Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2325.	$5,000,000	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education early childhood education and job training.
St. Louis Housing Authority, 3520 Page Boulevard, St. Louis, MO 63106–1417.	5,000,000	Construction of a New Facility.	Development of a facility at which the PHA will provide early childhood education.
Helena Housing Authority, 812 Abbey Street, Helena, MT 59601–7924.	576,479	Construction of a New Facility.	Development of a facility at which the PHA will provide early childhood education and job training.
Housing Authority of the City of Asheville, P.O. Box 1898, 165 S French Broad Avenue, Asheville, NC 28802–1898.	3,997,348	Rehabilitation of a Building.	Development of a facility at which the PHA will provide adult education and job training.
Housing Authority of the City of Camden, 2021 Watson Street, 2nd Floor, Camden, NJ 08105–1866.	2,230,168	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education early childhood education and job training.
Albany Housing Authority, 200 South Pearl Street, Albany, NY 12202–1834.	4,983,822	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education early childhood education and job training.
Akron Metropolitan Housing Authority, 100 West Cedar Street, Akron, OH 44307–2569.	4,002,147	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education early childhood education and job training.
Housing Authority of the City of Austin, P.O. Box 6159, Austin, TX 78762–6159.	1,745,550	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education and job training.
Housing Authority of the City of Seattle, 120 6th Avenue North, Seattle, WA 98109–5002.	3,109,271	Rehabilitation of a Building.	Development of a facility at which the PHA will provide adult education early childhood education and job training.
King County Housing Authority, 600 Andover Park West, Tukwila, WA 98188–3326.	815,888	Rehabilitation and Expansion of a Building.	Development of a facility at which the PHA will provide adult education early childhood education and job training.
King County Housing Authority, 600 Andover Park West, Tukwila, WA 98188–3326.	1,218,678	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education early childhood education and job training.

LIST OF CAPITAL FUND EDUCATION AND TRAINING COMMUNITY FACILITIES (CFCF) PROGRAM NOFA GRANTEES FOR FISCAL YEAR 2010—Continued

Name/address of applicant	Amount funded	Activity funded	Project description
King County Housing Authority, 600 Andover Park West, Tukwila, WA 98188–3326.	995,207	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education early childhood education and job training.

[FR Doc. 2011–24838 Filed 9–26–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5529–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2011

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2011, and ending on June 30, 2011.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2011.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2011 through June 30, 2011. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are set out in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2011) before the next report is published (the second quarter of calendar year 2011), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 21, 2011.

Helen R. Kanovsky,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2011 through June 30, 2011

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development
II. Regulatory waivers granted by the Office of Housing
III. Regulatory waivers granted by the Office of Public and Indian Housing

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The project involve the demolition of blighted buildings, removal of debris and other related materials, and finished grading/seeding of two former commercial properties located along Front Street in Berea, Ohio. The two former commercial operations were the William Ford Auto Dealership and the Serpentini Used Car Lot located at 739 and 566 Front Street, respectively. The city of Berea acquired these two properties as a consequence of a federally funded, state and local roadway improvement project.

Cuyahoga County, the Responsible Entity for the project, did not conduct the correct level of environmental review for both projects as required by 24 CFR part 58. The failure to conduct environmental assessments resulted in a lack of an approved Request for Release of Funds before the properties were demolished using non-HUD funds.

Subsequent to identifying the properties for participation in the Neighborhood Stabilization program in response to a solicitation from Cuyahoga County Land Reutilization Corporation (CCLRC) for demolition proposals, but prior to any release of funds from HUD, the CCLRC used non-HUD funds to demolish the buildings.

Nature of Requirement: The regulation requires that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 29, 2011.

Reason Waived: The waiver was granted because the above project would further the HUD mission and advance HUD program goals to develop viable, quality communities. The County erroneously conducted an improper level of environmental review. No HUD funds were committed. Granting the waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 85.31(c)(2).

Project/Activity: In 1993, the City of San Francisco awarded the Bernal Heights Neighborhood Center's Housing Services Affiliate (HSA) a Housing Opportunities for Persons With Aids (HOPWA) formula grant in the amount of $409,550 to acquire and rehabilitate Stinson House, a six unit facility-based housing project for low-income persons living with HIV/AIDS. In May 2010, HSA sold the facility following an organizational assessment on financial constraints, the building's state of deterioration, and the high cost of rehabilitation. The city used the sale proceeds to respond to community needs and address the critical housing needs of HOPWA eligible clients who prefer independent housing with on-site supportive services rather than the Stinson House model of shared housing with off-site supportive services. These actions were taken prior to requesting guidance on property disposition from HUD as the funding authority, which violated HUD regulations regarding disposition of real property. A single audit of the city's HOPWA program questioned whether the city has complied with HOPWA regulations regarding the disposition of real property and the use of sales proceeds to fund eligible program activities.

Nature of Requirement: HUD regulations at 24 CFR 85.31(c) require a grantee or subgrantee to request property disposition instructions when real property purchased with federal funding is no longer needed for the originally authorized purpose. In the event that disposition instructions from the awarding agency call for the sale of the property, the regulation at 24 CFR 85.31(c)(2) requires a grantee or subgrantee to engage in sales procedures that provide for competition to the extent practicable and to compensate the awarding agency based on the awarding agency's participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual or reasonable selling and fixing up expenses. HOPWA grantees and subgrantees are required to comply with 24 CFR 85.31(c), applicable to the HOPWA program at 24 CFR 574.605. Section 574.605 of the HOPWA regulations governs the disposition of real property that is acquired in whole or in part with HOPWA grant funding.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: May 23, 2011.

Reason Waived: The waiver was granted based on the following findings: HOPWA program purposes were served by the project in assisting beneficiaries during the minimum use period and later by the return of the property's sales proceeds to the city, which in turn were used in providing housing assistances to other HOPWA beneficiaries in the San Francisco area. There was no evidence to suggest that the city intentionally non-complied with HOPWA program regulations.

Contact: Mark Johnston, Deputy Assistance Secretary for Special Needs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7276, Washington, DC 20410–7000, telephone (202) 708–1590.

• *Regulation:* 24 CFR 570.208(a)(3) as it applies through 24 CFR 570.703.

Project/Activity: The City of Dallas, Texas requested waiver of the criteria for national objective at 24 CFR 570.208(a)(3), as it applies through 24 CFR 570.703, for the rehabilitation of multifamily housing in a mixed use commercial and residential development in its Central Business District (CBD). The city of Dallas submitted a request for Section 108 Guaranteed Loan funds in the amount of $7,600,000 to assist with the redevelopment and rehabilitation of the Continental Building, a vacant office building in the city's CDB, into 5,000 square feet of commercial space and 203 multi-family rental units that are 1 bedroom and 2 bedroom apartments of which 20 percent (41 units) will be occupied by low- and moderate-income (LMI) households. Section 108 funds will only be used for housing rehabilitation, which is an eligible activity pursuant to 24 CFR 570.703(h). However, the proposed activity did not meet the LMI national objectives criteria because less than 51 percent of the units will be occupied by LMI households. Therefore, the city requested a waiver to apply the exception at 24 CFR 570.208(a)(3)(i) to reduce the percentage of LMI occupied units from 51 percent to 20 percent. The Section 108 funds will account for less than 20 percent of total development costs for the project. The request would prevent the loss of 41 units of affordable housing that would not otherwise be available.

Nature of Requirement: HUD's regulation at 24 CFR 570.208(a)(3) generally provides that, in the case of acquisition or rehabilitation of residential structures with more than two units, at least 51 percent of such units must be occupied by LMI households. However, the exception at 24 CFR 570.208(a)(3)(i) permits Community Development Block Grant funds (which term includes the proceeds of a Section 108 loan) to be used to support the new construction of non-elderly rental housing when not less than 20 percent of the units will be occupied by low- and moderate-income households at affordable rents and the proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of units that will be occupied by low- and moderate-income households.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning & Development.

Date Granted: June 30, 2011.

Reason Waived: HUD granted the waiver because the city of Dallas showed good cause by demonstrating that the project would not be financially feasible without the Section 108 loan funds and if it were required to have 51 percent of the units occupied by LMI households. This would result in the project not being developed and the loss of 41 affordable housing units that would otherwise be available. In addition, the city demonstrated that the project would promote housing and economic revitalization goals by assisting in its efforts of increasing affordable housing in the CBD and increasing mixed-income housing through spatial deconcentration, which furthers the purpose of the Housing and Community Development Act of 1974, as amended, as it relates to providing decent housing and a suitable living environment, reducing the isolation of income groups within communities, and promoting an increase in diversity of

neighborhoods through the special deconcentration of housing opportunities for persons of lower income. In addition, HUD granted the waiver with mandatory conditions, including the requirements that the City provide HUD a copy of its plan to address rental housing needs of low-income families that demonstrates how the Continental Building project is consistent with the housing needs described in its Consolidated Plan (see 24 CFR 91.205), provide HUD with copies of compliance and monitoring plans for other identified Section 108 projects, provide HUD with a schedule for adopting and publishing standards for determining affordable rents, and ensure a 15-year affordability requirement for the Continental Building project.''

Contact: Paul D. Webster, Director, Financial Management Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7178, Washington, DC 20410–7000, telephone: (202) 708–1871.

• *Regulation:* 24 CFR 574.330 (a)(1) and (b(1).

Project/Activity: The Downtown Emergency Service Center (DESC) located in Seattle, Washington, requested an additional waiver of the HOPWA short-term supported housing regulations for which they were granted a waiver by HUD on September 9, 2010. DESC is a HOPWA competitive grant recipient that provides permanent and supportive services to persons living with HIV/AIDS. HUD had previously determined that DESC provided short-term supported housing to 60 families, beyond the limit of 50 families as prescribed in the HOPWA regulation. In addition, the program was also supporting these families for longer than the allotted six-month period. DESC has complied with the requirements of the first waiver and has submitted documentation to substantiate its difficulty in identifying permanent housing for those with complex mental health issues and criminal records.

Nature of Requirement: HOPWA regulations at 24 CFR 574.330 (a)(1) and (b(1) require that short-term supported housing facilities not provide residence to any individual for more than 60 days during any six month period. Rent, mortgage, and utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. These regulations also require that any short-term supported facility not provide shelter or housing at any single time for more than 50 families or individuals.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 21, 2011.

Reason Waived: The waiver was granted based on the following findings: The grantee and project sponsor acted in good faith to identify more permanent housing options for its program beneficiaries. They were compliant with the requirements and given the extenuating circumstances in identifying more suitable housing, the waiver would enable DESC to continue addressing the emergency shelter needs of those difficult to house homeless individuals with challenging mental health issues. The waiver will expire six months from the date of approval and applies only to DESC service area.

Contact: Mark Johnston, Deputy Assistance Secretary for Special Needs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7276, Washington, DC 20410–7000, telephone (202) 708–1590.

• *Regulation:* Section IV.D of the Notice of Allocations, Application Procedures, and Requirements for Homeless Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment of 2009, issued March 19, 2009 (HPRP Notice).

Project/Activity: HUD extended a limited waiver of the HPRP participant eligibility requirements to the State of Kentucky, the City of Louisville, and the City of Baltimore to facilitate those grantees' participation in the HUD-funded study, The Impact of Housing and Services Interventions on Homeless Families.

Nature of Requirement: Section IV.D of the HPRP Notice provides that all participants must meet the following minimum eligibility criteria: (1) Have at least an initial consultation with a case manager to determine the appropriate type of assistance; (2) be at or below 50 percent Area Median Income (AMI); (3) be homeless or at risk of losing housing; (4) have failed to identify appropriate subsequent housing options; and (5) lack the financial resources and support networks needed to maintain or obtain immediate housing. Section IV.D also requires grantees to evaluate and certify participant eligibility at least once every three months for all persons receiving medium-term rental assistance.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 1, 2011.

Reason Waived: As part of the HUD-funded study, HUD waived the HPRP eligibility requirements so that the grantees and their subgrantees could provide rapid re-housing assistance to randomly assigned homeless families without verifying those families' eligibility for HPRP.

Contact: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410–7000, telephone number (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 202.5(g).

Project/Activity: Applicants for Federal Housing Administration (FHA) lender approval or renewal as supervised lenders and mortgagees possessing consolidated assets below the thresholds for required submission of annual audited financial statements set by their respective regulators at 12 CFR 363.1(a), 12 CFR 562.4(b)(2), or 12 CFR 715.4(c).

Nature of Requirement: Section 202.5(g) requires supervised, non-supervised, and investing lenders or mortgagees to furnish to FHA a copy of their annual audited financial statements within 90 days of the lender or mortgagee's fiscal year end in order to obtain or renew FHA lender approval. The other requirements of this section were not waived.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 7, 2011.

Reason Waived: For some small supervised lenders and mortgagees that originate low volumes of FHA loans, the new expense for obtaining audited financial statements may be deemed too burdensome to justify continued participation in FHA programs as approved lenders and mortgagees. Due to the fact that many of these small supervised lenders and mortgagees are located in rural communities that possess a limited selection of residential mortgage lending entities, the relinquishment of FHA lender approval by these institutions may decrease access to FHA programs for some rural communities. In the midst of the present economic recovery, and given FHA's more prominent role in the nation's mortgage market at present, a reduction in the availability of FHA-insured mortgage credit could adversely impact the recovery of some states and communities. A waiver of the new audited financial statement requirements for supervised lenders meeting the designated consolidated asset thresholds helped to ensure the continued availability of FHA products throughout the nation, and would not pose significant additional risk to FHA's insurance funds.

Contact: Richard Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Room P3214, Washington, DC 20024–8000, telephone (202) 708–1515.

• *Regulation:* 24 CFR 203.41(a)(5)

Project/Activity: The waiver was not granted in connection with the FHA Inspector Roster.

Nature of Requirement: The introductory language in section 203.41(a)(5) defines ''eligible nonprofit organization,'' in part, as an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (IRC) as an organization exempt from federal taxation under IRC § 501(a). FHA has received several requests from nonprofit instrumentalities of government, whose income is excluded from federal taxation pursuant to IRC section 115, seeking placement on the Roster and approval to provide secondary financing. Although these nonprofit instrumentalities satisfy all other FHA requirements for placement on the Roster and would otherwise be eligible to provide secondary financing, they are not organizations of the type described in section 501(c)(3). Thus, without the waiver, they are ineligible for placement on the Roster as

providers of secondary financing. This waiver enables IRC section 115 nonprofit government instrumentalities to be placed on the Roster so they can provide affordable housing opportunities to more Americans via secondary financing until the regulations are amended. The waiver does not provide IRC section 115 nonprofit entities with the ability to purchase either FHA REO or to obtain FHA-insured mortgage financing.

This waiver also waived the regulations at 24 CFR 203.41(a)(5)(ii), which requires that all nonprofit organizations participating in FHA programs have a voluntary board. The voluntary board requirement (i.e., no financial compensation to board members) is waived for all IRC section 115 nonprofit instrumentalities of government seeking placement on the FHA Roster and approval to participate in FHA programs as providers of secondary financing. This waiver will enable an IRC section 115 nonprofit instrumentality of government to have a board member who also is a salaried employee of the governmental body in control of the nonprofit instrumentality.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner

Date Granted: June 17, 2011

Reason Waived: This waiver is a renewal of the waiver issued September 10, 2010 and is made retroactive to cover any period that has lapsed between February 23, 2011 and the official date this waiver is signed. Single Family has initiated the process for official rulemaking to offer a permanent solution to the needed change in policy.

Contact: Brian Siebenlist, Department of Housing and Urban Development, 451 7th Street, SW., Room B–133—Plaza 2206, Washington, DC 20410.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Emerson Center Apartments—FHA Project Number 083–44801. The owner requested to defer repayment of the Flexible Subsidy Operating Assistance Loan on this project due to the project owner's inability to repay the loan in full or partially upon maturity.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 27, 2011.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan because the project did not have sufficient funds to repay the loan. The owner was allowed to fully re-amortize the existing loan and record a Rental Use Agreement for a 20-year term through 2031, thereby maintaining the long-term preservation of the project as an affordable housing resource.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: HRCA Housing for the Elderly/Jack Satter House—FHA Project Number 023–EH001, Revere, Massachusetts. The owner requested to defer repayment of the Flexible Subsidy Loan to achieve the long-term preservation of this project as affordable housing for the elderly.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 14, 2011.

Reason Waived: The owner demonstrated that deferral of repayment of the Flexible Subsidy Operating Assistance Loan is necessary to achieve the long-term preservation of the project. Approval of this waiver would allow the owner to re-amortize the loan over a 35-year period, the term of the new financing, and complete much needed repairs at the project and maintain the project's financial and physical integrity.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Blue Lake Residences, Twin Lakes, Michigan—FHA Project Number 047–35227. The owner of the property is unable to repay the Flexible Subsidy Operating Assistance Loan without dire consequences to the property and residents that reside there.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: April 26, 2011, amended July 29, 2011.

Reason Waived: Providing for waiver of this regulation would allow the owner to defer repayment of the Flexible Subsidy Loans over a 30-year period and recapitalize the property. A Rental Use Agreement would be recorded for the term of the new FHA insured mortgage to 2041, thereby restoring the financial and physical soundness to the property. The project would, thereby, be maintained as an affordable housing resource.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Bethany Villa I Apartments, Troy, Michigan—FHA Project Number 044–SH022. The owner requested waiver of this regulation to permit deferral of repayment of the Flexible Subsidy Loans upon prepayment of the project's mortgage. The owner was unable to repay the loan partially or fully upon prepayment of the project's mortgage.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 6, 2011.

Reason Waived: Waiver of this regulation was granted to allow the owner to defer repayment of the Flexible Subsidy Operating Assistance Loan, and refinance with a new FHA-insured mortgage to redevelop the property. The owner would then be able to make much needed repairs and the project would be maintained as decent, safe and sanitary housing for its residents. A new Rental Use Agreement is to be recorded for a term of 35 years, preserving housing affordability for the Troy, Michigan area.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Bethany Villa II Apartments, Troy, Michigan—FHA Project Number 044–44092. The owner has requested waiver of this regulation to permit deferral of repayment of the Flexible Subsidy Loans upon prepayment of the project's mortgage. The owner is unable to repay the loan partially or fully upon prepayment of the project's mortgage.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment

of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2011.

Reason Waived: Sufficient need was determined and waiver of this regulation was granted to allow the owner to defer repayment of the Flexible Subsidy Operating Assistance Loan. Waiver of this requirement would prevent dire consequences to the property and the residents that reside there. The project would be able to make much needed repairs to the property and allow the project to be maintained as decent, safe and sanitary housing. A new Rental Use Agreement is to be recorded for a term of 35 years, preserving housing affordability for the Troy, Michigan area.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Redeemers Arms Apartments, St. Paul, Minnesota—FHA Project Number 092–SH017. The owner requested deferral of repayment of the Flexible Subsidy Operating Assistance Loans upon prepayment of the project's mortgage to restore the financial soundness of the project and complete needed rehabilitation.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2011.

Reason Waived: The owner was granted permission to defer repayment of the Flexible Subsidy Operating Assistance Loans, and transfer ownership of the property to a non-profit entity. The proposed rehabilitation will modernize this aging property and improve the quality of life for the residents. The loan is to be re-amortized, and a new Rental Use Agreement will be recorded, extending the project's affordability for an additional 33 years.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Union Acres Trust, Center, Texas—FHA Project Number 114–35034. The owner has requested waiver of this regulation to permit deferral of repayment of the Flexible Subsidy Loans upon prepayment of the project's mortgage.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2011.

Reason Waived: The owner was granted permission to defer repayment of the Flexible Subsidy Operating Assistance Loans. The owner had proposed to transfer ownership of the property to a non-profit entity that would provide funds for the much needed rehabilitation of the property. The loan is to be re-amortized over a 40-year period with new financing, and a new Rental Use Agreement. This would provide long-term preservation of affordable housing for Center, Texas.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Better Housing for Erie, Erie, Pennsylvania—FHA Project Number 033–35008. The owner has requested waiver of this regulation to permit deferral of repayment of the Flexible Subsidy Loans upon prepayment of the project's mortgage.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2011.

Reason Waived: The owner was granted permission to defer repayment of the Flexible Subsidy Operating Assistance Loans, to restore the financial soundness of the project. The owner obtained financing from a non-profit agency and the new loan is to be amortized over 10 years. The existing Flexible Subsidy Loan is to be reduced and be fully re-amortized over a 20-year period. A new 20-year HAP contract is to be executed extending the affordability of this project.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Alpha Arms Apartments, Goldsboro, NC—053–44135. The owner has requested waiver of this regulation to permit deferral of repayment of the Flexible Subsidy Loans upon prepayment of the project's mortgage.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2011.

Reason Waived: The owner was granted permission to defer repayment of the Flexible Subsidy Operating Assistance Loan upon prepayment/refinance of the Section 236 mortgage. The owner proposed to refinance the project which would provide funds to make urgent physical repairs, replacements and updates. Alpha Arms is to execute a new Rental Use Agreement, extending the affordability of the project for 40 years.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Mt. Zion Garden Apartments, Albany, Georgia—061–35005. The owner has requested waiver of this regulation to permit deferral of repayment of the Flexible Subsidy Loans upon prepayment of the project's mortgage.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May June 21, 2011.

Reason Waived: The owner was granted permission to defer repayment of the Flexible Subsidy Operating Assistance Loan upon prepayment/refinance of the Section 223(f) mortgage. The owner proposed to refinance the project which would provide funds to make much needed physical repairs at the project. The owner is to execute a Rental Use Agreement for the 20-year term of the re-amortized Note, extending the project as an affordable housing resource for the Albany area.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Liberty Resources 13, Philadelphia, PA; Project Number: 042–EE206/OH12–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 7, 2011.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142 Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Village at Oasis Park Phase I, Mesa, AZ, Project Number: 123–HD042/AZ20–Q081–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 29, 2011.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Evergreen Terrace, Albany, OH; Project Number: 043–124OH16–S081–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2011.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142,Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shiloh Senior Housing, New Rochelle, NY, Project Number: 012–EE361/NY36–S071–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2011.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Project Number: 042–EE206/OH12–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 7, 2011.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).

Project/Activity: Armory Lane Housing Limited Partnership, Vergennes, VT, Project Number: 024–EE136/VT36–S091–004.

Nature of Requirement: Section 891.130(b) prohibits an identity of interest between the sponsor or owner (or borrower, as applicable) and any development team member or between development team members until two years after final closing.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 28, 2011.

Reason Waived: To permit an identity of interest for the mixed financed project between the ownership entity and the joint developer, and between the two development team members, the contractor and joint developer.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Leeway Welton Apartments, New Haven, CT, Project Number: 017–HD041/CT26–Q071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 8, 2011.

Reason Waived: Additional time was needed for the project to achieve an initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Bernard Volunteers of America Elderly Housing, St. Bernard, OH, Project Number: 046–EE097/OH10–S081–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 11, 2011.

Reason Waived: Additional time was needed for the firm commitment to be issued and for the project to be initially closed.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Champion Place, Perry, New York, Project Number: 014–EE274/NY06–S081–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 12, 2011.

Reason Waived: Additional time was needed for the firm commitment application to be processed and for the project to achieve initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: City of Utica Section 811 Project, Utica, NY, Project Number: 014–HD132/NY06–S081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 15, 2011.

Reason Waived: Additional time was needed for the firm commitment application to be processed and for the project to achieve initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: RJ Piltz Vista Bonita Apartments, Mesa, AZ; Project Number: 123–HD041/AZ20–Q061–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2011.

Reason Waived: Additional time was needed to reach an initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fillmore Haciendas, Phoenix, AZ; Project Number: 123–EE105/AZ20–S071–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2011.

Reason Waived: Additional time was needed to reissue the firm commitment and for the project to reach an initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Bergen ILP 2005, Ridgewood, NJ; Project Number: 031–HD145/NJ39–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2011.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Quincy Commons, Roxbury, MA; Project Number: 023–EE227/MA06–S081–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2011.

Reason Waived: Additional time was needed to secure secondary funding upon completion of this mixed finance project and to achieve an initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Shiloh Senior Housing, New Rochelle, NY; Project Number: 012–EE361/NY36–S071–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2011.

Reason Waived: Additional time was needed to reach initial closing and the start of construction.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Allen by The Bay Senior Housing, Queens, NY; Project Number: 012–EE368/NY36–S081–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 14, 2011.

Reason Waived: Additional time was needed for the completion of the sale of the tax exempt bonds by New York and for the project to reach an initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: CPNJ Livingston Residence, Livingston, NJ, Project Number: 031–HD157/NJ39–Q081–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2011.

Reason Waived: Additional time was needed for the sponsor/owner to receive a response from the New Jersey Department of Environmental Protection (NJDEP) regarding the boundaries of the riparian buffer so the architectural plans and specs could be finalized, submit the firm commitment, and for the project to reach initial closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.170(a), 24 CFR 891.830(b) and 24 CFR 891.830(c)(4).

Project/Activity: Shiloh Senior Housing, New Rochelle, NY; Project Number: 012–EE361/NY36–S071–007.

Nature of Requirement: Section 891.170(a) requires that a capital advance shall bear no interest and its repayment shall not be required so long as the housing project remains available for very low-income elderly families or persons with disabilities. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by

HUD and § 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2011.

Reason Waived: The waiver was granted to permit the sole general partner of the subject project to be a for-profit corporation that is wholly owned and controlled by the nonprofit sponsor. The waiver was granted to also allow the capital advance to be drawn down in one requisition, to pay off that portion of a bridge or construction financing, or bonds that strictly relate to capital advance eligible costs after completion of construction at initial/final closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.805.

Project/Activity: Cheriton Heights, West Roxbury, MA, Project Number: 023–EE225/MA06–S081–001.

Nature of Requirement: Section 891.805 requires that the Sole General Partner of the Mixed Finance owner be a Private Nonprofit Organization with a 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a Nonprofit Organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2011.

Reason Waived: To permit the sole general partner of the subject project to be a for-profit corporation that is wholly owned and controlled by the nonprofit sponsor.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.830(c)(4).

Project/Activity: Shiloh Senior Housing, New Rochelle, NY, Project Number: 012–EE361/NY36–S071–007.

Nature of Requirement: Section 891.830(c)(4) requires that capital advance funds be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

Granted By: Robert C. Ryan, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 6, 2011.

Reason Waived: The waiver was granted to permit the sole general partner of the subject project to be a for-profit corporation that is wholly owned and controlled by the nonprofit sponsor. The waiver was granted to also allow the capital advance to be drawn down in one requisition, to pay off that portion of a bridge or construction financing, or bonds that strictly relate to capital advance eligible costs after completion of construction at initial/final closing.

Contact: Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Estancias Presbiterianas del Angel, Hormigueros, Puerto Rico—FHA Project Number 056–EE056. The project is experiencing difficulty leasing units to eligible very low-income elderly applicants.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 5, 2011.

Reason Waived: The owner aggressively marketed units to eligible tenants but continues to experience vacancy problems at the project. It was determined that waiver of this regulation would allow the owner to lease units to low-income, near-elderly applicants for a period of 12 months. However, applicants who apply after the waiver period must strictly meet the Section 202 statutory and regulatory requirements, including being very low-income elderly. This waiver allowed the property to rent-up its vacant units and thereby stabilize the project's financial status and prevent foreclosure of the property.

Contact: Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of the County of Dauphin (PA035), Steelton, PA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 2011.

Reason Waived: The HA requested additional time to submit its fiscal year end (FYE) June 30, 2010, audited financial submission as a result of system and performance issues related to HUD systems. The waiver was granted and the additional time permitted the HA to enter all the financial information into REAC's on-line system and allowed the auditor to perform the agreed upon procedure. The HA was allowed to submit its audited financial data for FYE June 30, 2010, after the deadline but no later April 30, 2011.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Santa Fe Civic Housing Authority (NM009), Santa Fe, NM.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2011.

Reason Waived: The HA contends that it had fallen behind in preparing its FYE 2010 audit due to difficulties encountered with the HA's takeover of the Espanola Housing Authority (EHA). The HA was supposed to absorb the EHA's Public Housing (PH), Capital Fund Program (CFP) and Housing Choice Voucher Program (HCVP). The HCVP was transferred prior to June 30, 2009. However, the PH and CFP were not transferred until late August 2010, with a retroactive date of July 1, 2009. At the time of the official notification of transfer from HUD to the HA, 80 percent of the FY2010 audit field work had already been completed. The additional complexities of the Low Rent and Capital Fund Program transfers delayed the HA in its audit time table. The waiver for its audited financial data for FYE June 30, 2010 was granted and it should submit its financial data no later than May 31, 2011.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Oakland Housing Authority (CA003), Oakland, CA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 16, 2011.

Reason Waived: The HA contends that as a result of a HUD Office of the Inspector General Investigation, additional time was needed to submit its fiscal year end (FYE) June 30, 2010, audited financial information. Specifically, as part of the investigation, the

HA's financial records have been confiscated. Also, required representation letters to the HA's external auditor cannot be made until the materiality and significance has been determined. The waiver was granted and the additional time will permit the audited documentation to be adequately completed and allow ample time for the HA's drafting the financial statements and inputting the financial information into REAC's on-line system. The HA must submit its audited financial data for FYE June 30, 2010, on or before June 30, 2011.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of the County of Santa Clara (CA059), San Jose, CA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 8, 2011.

Reason Waived: The HA requested additional time to submit its fiscal year end (FYE) June 30, 2010, audited financial submission. The HA contends that it incurred a Section 8 program electronic loss due to technical problems. As a result of the data loss, financial information needed to be reconstructed. The auditors commenced the process of reviewing the reconstructed financial information. The waiver was granted and the additional time permitted the audit documentation to be completed and allowed ample time for drafting the financial statements and inputting the FYE June 30, 2010, audited financial information into the Real Estate Assessment's on-line system.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of DeKalb County (GA237), Decatur, GA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 8, 2011.

Reason Waived: The HA contends that additional time was needed to submit its fiscal year end (FYE) June 30, 2010, audited financial information. The HA has fallen behind in preparing its FYE 2010 audit as a result of turnover in key positions at the HA. Specifically, the HA did not have a Director of Finance from June 30, 2010, to mid November 2010. The HA did not have a permanent Executive Director from June 2010 to October 2010. The waiver was granted and the additional time will permit the audited documentation to be adequately completed and allow ample time for the HA's drafting the financial statements and inputting the financial information into REAC's on-line system.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Metropolitan Development and Housing Agency, (TN005), Nashville, TN.

Nature of Requirement: The regulation establishes that public housing agencies (PHAs) are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with **Federal Register** Notice (FR–5428–N–01), dated July 23, 2010, PHAs that requested and received an approved waiver for their management operations certification (MASS) for FYEs June 30, 2009, September 30, 2009, or December 31, 2009, were allowed to request another waiver for FYE June 30, 2010, September 30, 2010 or December 31, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 8, 2011.

Reason Waived: The HA requested a MASS waiver for fiscal year end (FYE) September 30, 2010, due to continued hardship claims, based on conversion to asset management. The HA received an approved MASS waiver for FYE September 30, 2009. The HUD field office, indicated that the hardship conditions had not changed but remained the same. The most recent management operations score of record will be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: McMinnville Housing Authority (TN053), McMinnville, TN.

Nature of Requirement: The regulation establishes that PHAs are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with **Federal Register** Notice (FR–5428–N–01), dated July 23, 2010, PHAs that requested and received an approved waiver for their management operations certification (MASS) for FYEs June 30, 2009, September 30, 2009, or December 31, 2009, may request another waiver for FYE June 30, 2010, September 30, 2010 or December 31, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 2011.

Reason Waived: The HA requested a MASS waiver for the FYE December 31, 2010, in conjunction with its conversion to asset management. The HA concentrated its resources to meet the requirement of asset management, while the HA recovered from a direct lightning strike to its computer system in 2009. The HA contends that it would have had to manually recreate portions of the data needed to certify its MASS performance and would encounter a significant burden in trying to provide information using the current MASS certification format. The waiver was granted for FYE December 31, 2010. The most recent management operations score of record is to be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Wytheville Redevelopment and Housing Authority (WRHA), Wytheville, VA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 21, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the WRHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Michigan State Housing Development Authority (MSHDA), Detroit, MI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 18, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would

enable the MSHDA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Gainesville Housing Authority (GHA), Gainesville, FL.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the GHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Wilmington Housing Authority (WHA), Wilmington, DE.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 6, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the WHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Maryville Housing Authority (MHA), Maryville, TN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 6, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the MHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: County of Hawaii Office of Housing and Community Development (CHOHCD), Hilo, HI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the CHOHCD) to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Bennington Housing Authority (BHA), Bennington, VT.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the BHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Pennsauken Housing Authority (PHA), Pennsauken, NJ.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 30, 2011.

Reason Waived: This waiver was granted because this cost-saving measure would enable the PHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Providence Housing Authority, Providence, RI.

Nature of Requirement: This regulation states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 21, 2011.

Reason Waived: The participant, who is disabled, requires a unit that is free of chemical fumes. To provide a reasonable accommodation to allow this client to move into a unit that meets the participant's needs, an exception payment standard was approved so the client could be assisted and pay no more than 40 percent of her adjusted income toward the family share, the Providence Housing Authority was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public

Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Center for People with Disabilities (CPD), Boulder, CO.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) provides that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 26, 2011.

Reason Waived: The participant, who is disabled, requires a modified unit and a live-in aide. To provide this reasonable accommodation and allow the rent to remain affordable, an exception payment standard was approved so the client could be assisted in the participant's current unit and pay no more than 40 percent of her adjusted income toward the family share, the CPD was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.517(b)(1).

Project/Activity: Housing Authority of the City of Fresno (HACF) and the Housing Authority of Fresno County (HAFC), Fresno, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.517(b)(1) provides that the utility allowance schedule must be determined based on the typical costs of utilities and services paid by energy conservative households.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 26, 2011.

Reason Waived: It was determined that approval of an energy efficient utility allowance schedule for Park Grove Commons would achieve the following: Helped to ensure that utility allowances accurately reflected the typical cost of utilities and services paid by energy conservative households that occupy housing of similar size in energy efficient building in the same locality; encourage the development of affordable energy efficient buildings by removing barriers caused by using utility allowances that are based on consumption data from properties that as a whole are not very energy efficient; and likely to increase the supply of energy efficient affordable housing units.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.55(b) and 983.153(a).

Project/Activity: Housing Authority of the City of Milwaukee (HACM), Milwaukee, WI.

Nature of Requirement: Both regulations state that a public housing agency (PHA) may not enter the Agreement to Enter into a Housing Assistance Payments contract under the project-based voucher (PBV) program with the owner until the subsidy layering review (SLR) is completed.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 2011.

Reason Waived: The Wisconsin Housing and Economic Development Authority (WHEDA) conducted the SLR on Veterans Manor in May 2009 which was thought to be sufficient to meet the requirements above. However, since WHEDA was not an approved independent entity, a waiver was granted due to the misunderstanding. Subsequently, HUD performed the SLR for this project.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.253(b).

Project/Activity: Louisiana Housing Authority (LHA), New Orleans, LA.

Nature of Requirement: The regulation states that under the project-based voucher (PBV) program, the contract unit leased to each family must be appropriate for the size of the family under the public housing agency's (PHA) subsidy standards.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 27, 2011.

Reason Waived: The LHA's efforts to lease up units for the PBV permanent supportive housing (PSH) program had been hampered by the lack of available one-bedroom units in the post-Hurricane Katrina GO ZONE. The waiver allowed the LHA to solicit proposals from owners of two-bedroom units who are willing to rent such units that do not exceed 110 percent of the one-bedroom payment standard.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.259.

Project/Activity: Housing Authority of Thurston County (HATC), Thurston County, WA.

Nature of Requirement: HUD's regulation at 24 CFR 983.259 states that if a public housing agency (PHA) determines that a family is occupying a wrong-sized unit in the project-based voucher (PBV) program, it must promptly notify the family and the owner of this determination and of the PHA's offer of continued assistance in another unit. If the family does not accept the offer of continued assistance in another unit and does not move out of the PBV unit within a reasonable time, the PHA must terminate the housing assistance payments for the wrong-sized unit at the expiration of the reasonable period determined by the PHA.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 25, 2011.

Reason Waived: Two disabled household members (out of the original four members) required a wheelchair-accessible unit and accessible shower. The waiver was approved to allow these remaining household members to stay in their current oversized unit as a provision of a reasonable accommodation.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Hamilton Township Housing Agency (HTHA), Hamilton Township, NJ.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states that a public housing agency must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year or March 1, 2011.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 11, 2011.

Reason Waived: The executive director of the HTHA was ill for several weeks during the submission period and is the only one who has the rights to submit a SEMAP certification. This waiver allowed the HTHA to submit its SEMAP certification after the deadline.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Lakewood Housing Authority (LHA), Lakewood, NJ.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states that a public housing agency must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year or March 1, 2011.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 11, 2011.

Reason Waived: The executive director of the LHA was absent from the office for long periods of time due to illness and

hospitalization. The deputy director passed away suddenly during the submission period. This waiver allowed the LHA to submit its SEMAP certification after the deadline.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Joplin Housing Authority (JHA), Joplin, MO.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states that a public housing agency must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year ending March 1, 2011.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 11, 2011.

Reason Waived: The JHA's administrative offices were destroyed during the May 22, 2011 tornado.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2011–24839 Filed 9–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–NCTC–2011–N192; 97320–1661–0040–92]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Application for Training, National Conservation Training Center

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S.Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2011. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before October 27, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (e-mail). Please include ''1018–0115'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (e-mail) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0115.

Title: Application for Training, National Conservation Training Center.

Service Form Number: 3–2193.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Persons who wish to participate in training given at or sponsored by the National Conservation Training Center (NCTC).

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion when applying for training at NCTC.

Estimated Annual Number of Respondents: 500.

Estimated Total Annual Responses: 500.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 84.

*Abstract:*The U.S. Fish and Wildlife Service National Conservation Training Center in Shepherdstown, West Virginia, provides natural resource and other professional training for Service employees, employees of other Federal agencies, and other affiliations, including State agencies, private individuals, not-for-profit organizations, and university personnel. FWS Form 3–2193 (Training Application) is a quick and easy method for prospective non-Department of the Interior students to request training. We encourage applicants to use FWS Form 3–2193 and to submit their requests electronically. However, we do not require applicants to complete both a training form required by their agency and FWS Form 3–2193. NCTC will accept any single training request as long as each submission identifies the name, address, and phone number of the applicant, sponsoring agency, class name, start date, and all required financial payment information.

NCTC uses data from the form to generate class rosters, class transcripts, and statistics, and as a budgeting tool for projecting training requirements. It is also used to track attendance, mandatory requirements, tuition, and invoicing for all NCTC-sponsored courses both on- and off-site.

Comments: On December 16, 2010, we published in the **Federal Register** (75 FR 78731) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on February 14, 2011. We received one comment. The comment was directed to the subject matter, validity, and necessity of the training and not to the information collection requirements. The commenter believes that employees should obtain training prior to employment and that further training is unnecessary. We have not made any changes to the collection in response to this comment.

We again invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways toenhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 21, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–24636 Filed 9–26–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2011–N176; 81420–9812–0520–Y4–FY11]

Draft Damage Assessment and Restoration Plan and Environmental Assessment for the M/V Cosco Busan Oil Spill

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), we, the Federal and State trustee agencies (trustees), have written a Draft Damage Assessment and Restoration Plan/Environmental Assessment (draft DARP/EA) that describes proposed alternatives for restoring injured natural resources and compensating recreational losses resulting from the *Cosco Busan* oil spill, which occurred in November 2007 in the San Francisco Bay Area. The purpose of this notice is to inform the public of the availability of the draft DARP/EA and to seek written comments on our proposed restoration alternatives in the draft DARP/EA.

DATES: We will consider public comments received on or before October 31, 2011.

ADDRESSES: You may download the Draft Damage Assessment and Restoration Plan/Environmental Assessment (draft DARP/EA) at any of the following *Web sites:*

- *http://www.fws.gov/contaminants/Issues/OilSpill.cfm.*
- *http://www.dfg.ca.gov/ospr/Science/cosco_busan_spill.aspx.*
- *darrp.noaa.gov/southwest/cosco/index.html.*

Alternatively, you may request paper copies of the draft DARP/EA from Janet Whitlock, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825–1888. For other methods of obtaining the draft DARP/EA, as well as how to view the administrative record for this action, please see Obtaining Documents for Comment.

You may submit comments on the draft DARP/EA by one of the following methods:

- *E-mail: janet_whitlock@fws.gov.*
- *U.S. Mail or Hand Delivery:* Janet Whitlock, at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Whitlock, at the above address.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2007, the cargo carrier M/V *Cosco Busan* struck a portion of the fendering system for the San Francisco-Oakland Bay Bridge's Delta Tower. This ruptured one or more of the vessel's fuel tanks, allowing a portion of the vessel's bunker oil to be discharged into the San Francisco Bay. The estimated discharge amounted to approximately 53,000 gallons of Intermediate Fuel Oil 380, a heavy fuel oil used primarily to propel ships. The oil spread with the tides throughout the central San Francisco Bay and outside the Bay as far north as Point Reyes and as far south as Half Moon Bay oiling shorelines and wildlife. A wide variety of resources were impacted, including birds, fish, shoreline habitats, and human recreational activities.

We, the Federal and State trustees, have completed the injury assessment under the Oil Pollution Act of 1990 (OPA; 33 U.S.C. 2701 *et seq.*), and have estimated that 6,849 birds were killed, 3,367 acres of shoreline habitat were oiled, 14–29 percent of the 2007–08 herring spawn was lost, and 1,079,000 human recreational trips were lost.

The trustees are:

- U.S. Department of the Interior, acting through the U.S. Fish and Wildlife Service, National Park Service, and the Bureau of Land Management;
- U.S. Department of Commerce, acting through the National Oceanic and Atmospheric Administration; and
- State of California, acting through the California Department of Fish and Game and the California State Lands Commission.

Legal Settlement

The trustees negotiated a settlement in which the responsible parties, the owner and the operator of the vessel under OPA, will pay damages to compensate the public for the injuries to natural resources and lost recreation. The Consent Decree, the legal agreement which gives effect to the settlement, has been lodged in the Federal District Court and is the subject of a separate **Federal Register** notice and public comment period. Pursuant to the Consent Decree, the trustees expect to receive $32.3 million to implement and oversee restoration projects to benefit the resources that were injured in the spill and the public whose use of the resources was disrupted. The trustees anticipate allocating funds among the categories of injured resources and public use enhancements as follows: $5 million to benefit birds, $4 million to benefit shoreline habitats, $2.5 million to benefit eelgrass and fish, and $18.8 million for recreational improvements. Additional details regarding the proposed use of these funds are included in the draft DARP/EA and are summarized below.

Overview of the Draft DARP/EA

Summary

The draft DARP/EA is being released in accordance with the OPA, the Natural Resource Damage Assessment regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) It describes the trustees' proposal to restore natural resources injured by the M/V *Cosco Busan* spill and evaluates the impacts of the preferred restoration actions. The draft DARP/EA also describes the injury assessment; uses selection criteria to evaluate various projects to benefit birds, fish and eelgrass, and shoreline habitats; and discusses the environmental consequences of each preferred project. In addition, the draft DARP/EA describes a process for selecting recreational improvement projects.

Preferred Restoration Actions

Birds

The preferred restoration actions to benefit birds proposed in the draft DARP/EA include: creating roosting and nesting platforms on the old Berkeley Pier; nest site improvements on the Farallon Islands; water level management for wintering diving birds at the South Bay Salt Ponds; Grebe colony enhancement at Tule Lake National Wildlife Refuge; marbled murrelet nesting habitat protection at Humboldt Redwoods and Grizzly Creek State Parks; and projects benefiting surf scoters and diving ducks.

Shoreline Habitats

Preferred restoration actions to benefit shoreline habitats include: Dune restoration at Muir Beach in the Golden Gate National Recreation Area; restoration at Albany Beach in the East Bay; restoration at Aramburu Island; native oyster restoration at multiple sites in San Francisco Bay; and rockweed restoration at multiple sites in San Francisco Bay.

Fish and Eelgrass

Preferred restoration actions to benefit fish and eelgrass include eelgrass restoration at multiple sites in the San Francisco Bay.

Recreational Improvement Projects

Preferred restoration actions to benefit recreational uses throughout the Bay

Area and outer coast will be determined through a separate process.

Administrative Record

Pursuant to the OPA Natural Resource Damage Assessment regulations, the trustees have developed an Administrative Record that informs the public of information considered by them in restoration planning. Additional information and documents, including public comments received on this draft DARP/EA, the Final Restoration Plan (when it becomes available), and other related restoration planning documents, will also become part of the Administrative Record.

Request for Comments

Interested members of the public are invited to review and comment on the draft DARP/EA by the methods listed under **ADDRESSES**. Note that there are separate instructions in the draft DARP/EA document on how to submit comments. If you submit written comments according to the instructions in the draft DARP/EA, please do not resubmit them using another method. Submit only one set of comments by only one of the methods listed in this notice or by the method listed in the draft DARP/EA.

Written comments will be considered and addressed in the final DARP/EA at the conclusion of the restoration planning process. Comments will become part of the administrative record and available for public review as part of the record.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Obtaining Documents for Comment

Draft DARP/EA

The draft DARP/EA can be viewed in person by contacting Janet Whitlock at (916) 414–6599.

Administrative Record

The documents comprising the Administrative Record can be viewed electronically at the following location:

• *http://www.dfg.ca.gov/ospr/Science/cosco_busan_admin.aspx.*

The administrative record is on file at the following location:

• California Department of Fish and Game, Office of Spill Prevention and Response, 1700 K Street, Suite 250, Sacramento, CA 95814.

Arrangements may be made to view the record at this location by contacting Steve Hampton by telephone at (916) 323–4724.

Author

The primary author of this notice is Janet Whitlock (address above).

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S. C. 2701 *et seq.*) and the implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990.

Dated: September 19, 2011.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2011–24769 Filed 9–26–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2011–N155; 20124–1112–0000–F2]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan for Oncor Electric Delivery Facilities in 100 Texas Counties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service, correct a previously published notice that announced the availability of the draft environmental impact statement (DEIS) and the draft Oncor Electric Delivery Company, LLC, habitat conservation plan (HCP). Due to an inadvertent error, the prior notice mischaracterized the alternatives evaluated in the draft environmental impact statement. We correct the descriptions of the alternatives in this notice. The error was not in the DEIS or the HCP, but only in our previous notice.

DATES: *Comments:* We must receive written comments on the draft environmental impact statement and draft habitat conservation plan on or before close of business (4:30 p.m. CDT) October 13, 2011.

Public meetings: Up to nine public meetings will take place throughout Oncor's proposed 100-county permit area through September 28, 2011. Exact meeting locations and times will be announced in local newspapers, on the Austin Ecological Services Office Web site (*http://www.fws.gov/southwest/es/AustinTexas/*), and on Oncor's Web site (*http://www.oncor-eis-hcp.com*) at least 2 weeks prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758, or by phone at (512) 490–0057.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, we published a notice in the **Federal Register** (76 FR 41808) that announced that Oncor Electric Delivery Company, LLC, has applied under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), for an incidental take permit (ITP) (TE–40918A–0). The requested ITP, which would be in effect for a period of 30 years if granted, would authorize incidental take of 11 federally listed species. The proposed incidental take would occur in 100 Texas counties that comprise the Applicant's service area, excluding Williamson and Travis counties and with the addition of Runnels County, and would result from activities associated with maintenance and repair of existing electric facilities and installation and operation of new facilities.

The July 15, 2011, notice (76 FR 41808) provided information about Oncor's draft habitat conservation plan (HCP) and our draft environmental impact statement (DEIS) prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Please refer to that notice for further information, including details about public meetings, ways to obtain copies of the documents, and comment submission.

Due to an inadvertent error, the July 15, 2011, **Federal Register** notice did not accurately reflect the three alternatives explored in the DEIS. Therefore, we correct our description of the alternatives below in this document. Please note that all the documents we made available from the date of publication of our earlier notice (July 15, 2011) are correct. If you already obtained any documents for review, you do not need to get new copies. The only error was in the text of our notice.

Alternatives

The DEIS examines three alternatives:

1. *No Action—Project-Based Consultation*—Project-by-project consultations or ITPs. This alternative

would require Oncor to seek authorization on a project-by-project basis to address incidental take resulting from their actions, as needed, through section 7 of the Act or under section 10(a)(1)(B).

2. *Preferred Alternative—Proposed Alternative with 30-year Duration*—Issuance of an ITP by the Service for covered activities in the 100-county permit area, pursuant to section 10(a)(1)(B) of the Act. This is the Applicant's preferred alternative. The activities that would be covered by the ITP are general activities associated with new construction, maintenance, and emergency response and restoration, including stormwater discharges from construction sites, equipment access, and surveying. Construction activities covered for new facilities include new overhead transmission and distribution lines, new support facilities such as substations and switching stations, underground electric installation, and second-circuit addition on existing structures. Maintenance activities would include vegetation management within rights of way, expansion of existing support facilities, line upgrades, insulator replacement, and maintenance of underground electric facilities. The requested ITP will cover the 100-county permit area. The requested term of the permit is 30 years.

To meet the requirements of a section 10(a)(1)(B) ITP, the Applicant has developed and will implement the draft HCP, which describes the conservation measures the Applicant has agreed to undertake to minimize and mitigate for incidental take of the covered species to the maximum extent practicable. As described in the draft HCP, the Applicant anticipates that incidental take would not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

3. *Proposed Alternative with 50-year Duration*—Issuance of an ITP by the Service for covered activities in the 100-county permit area, pursuant to section 10(a)(1)(B) of the Act. This alternative would cover the same activities as the preferred alternative, but for a longer period of time. The requested term of the permit is 50 years.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2011–24752 Filed 9–26–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Privacy Act of 1974, as Amended; Notice To Amend an Existing System of Records

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to amend Bureau of Indian Affairs (BIA) Privacy Act system of records, ''Tribal Rolls—Interior, BIA–7'' to change the name of the system to the ''Tribal Enrollment Reporting and Payment System, Interior/BIA–7,'' and update the categories of individuals and records in the system, the authorities, routine uses, and policies and practices for records storage and disposition. This system is used to assist the Bureau of Indian Affairs in collecting data and analyzing applications to determine an individual's eligibility to share in judgment fund distributions authorized by plans prepared pursuant to Federal legislation. It also assists BIA in calling and conducting Secretarial elections.

DATE: Comments must be received by November 7, 2011.

ADDRESSES: Any person interested in commenting on this notice may do so by: submitting comments in writing to Willie Chism, Indian Affairs Privacy Act Officer, 625 Herndon Parkway, Herndon, Virginia 20170; hand-delivering comments to Willie Chism, Indian Affairs Privacy Act Officer, 625 Herndon Parkway, Herndon, Virginia 20170; or e-mailing comments to *willie.chism@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Deputy Bureau Director for Indian Services, 1849 C Street, NW., MS 4513–MIB, Washington, DC 20240 or 202–513–7640.

SUPPLEMENTARY INFORMATION:

I. Background

The BIA maintains the ''Tribal Rolls—Interior, BIA–7'' system of records, which it is renaming the ''Tribal Enrollment Reporting and Payment System, Interior/BIA–7.'' The BIA Tribal Enrollment Reporting and Payment System functions as a central database for Tribal enrollment records. The purpose of this system is to assist BIA to determine an individual's eligibility to share in judgment fund distributions authorized by plans prepared pursuant to 25 U.S.C. Section 1401, Funds appropriated in satisfaction of judgments of Indian Claims Commission or United States Court of Federal Claims. It also assists BIA in calling and conducting Secretarial elections under 25 CFR Part 81, Tribal Reorganization under a Federal Statute. The amendments to the system will include revising the system name and adding a routine use to comply with 5 U.S.C. 552a(b)(3) of the Privacy Act specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach. Other amendments will include updating data in the following fields: System location, categories of individuals and records in the system, authorities, routine uses, storage, retrievability, safeguards, retention and disposal, system manager and address, notification procedures, records access procedures, contesting records procedures and record source categories. This system notice was last published on August 21, 1990 (55 FR 34085).

The amendments to the system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended (5 U.S.C. 552a), embodies fair information principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens or lawful permanent residents. As a matter of policy, DOI extends

administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. Below is the description of the Bureau of Indian Affairs, Tribal Enrollment Reporting and Payment System, Interior/BIA–7 system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

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.

Dated: September 2, 2011.

Willie S. Chism,

Indian Affairs Privacy Act Officer, Assistant Secretary—Indian Affairs.

SYSTEM NAME:

Tribal Enrollment Reporting and Payment System, Interior/BIA–7.

SYSTEM LOCATION:

This system is located at the Bureau of Indian Affairs, Office of Information Operations (OIO), 1011 Indian School Road, NW., Suite 177, Albuquerque, NM 87104. Records may also be located in regional offices responsible for collecting data and analyzing applications to determine an individual's eligibility to share in judgment fund distributions, and calling and conducting Secretarial elections.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Indians who are applying for or have been assigned interests of any kind in Indian tribes, bands, pueblos or corporations, and individuals who are eligible to vote in Secretarial elections.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents supporting individual Indian claims to interests in Indian tribal groups and includes name, maiden name, alias, address, date of birth, social security number, blood degree, enrollment/BIA number, date of enrollment, enrollment status, certification by the tribal governing body, telephone number, e-mail address, account number, marriages, death notices, records of actions taken (approvals, rejections, appeals), rolls of approved individuals; records of actions taken (judgment distributions, per capita payments, shares of stock); ownership and census data taken using the rolls as a base, records concerning individuals which have arisen as a result of that individual's receipt of funds or income to which that individual was not entitled or the entitlement was exceeded in the distribution of such funds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. Section 1401, Funds appropriated in satisfaction of judgments of Indian Claims Commission or United States Court of Federal Claims; and 25 CFR part 81, Tribal Reorganization under a Federal Statute.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this system is to assist the BIA in collecting data to determine an Indian individual's eligibility to share in judgment fund distributions authorized by plans prepared pursuant to 25 U.S.C. Section 1401, Funds appropriated in satisfaction of judgments of Indian Claims Commission or United States Court of Federal Claims. The system also assists BIA in calling and conducting Secretarial elections under 25 CFR part 81, Tribal Reorganization under a Federal Statute.

Disclosures outside DOI may be made without the consent of the individual to whom the record pertains under the routine uses listed below:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is

compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs whether maintained by the Department or another agency or entity that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To the Tribe, Band, Pueblo or Corporation of which the individual to whom a record pertains is a member or a stockholder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders, locked file cabinets, and electronic media such as personal computers, magnetic disk, diskette, and computer tapes. The electronic records are contained in removable drives, computers, e-mail and electronic databases.

RETRIEVABILITY:

Records in the system can be retrieved by name, maiden name, alias, enrollment/BIA number, social security number, date of birth, and enrollment status.

SAFEGUARDS:

Records are maintained in accordance with 43 CFR 2.51, Privacy Act Safeguards for records. Access is provided on a need-to-know basis. During working hours, paper records are maintained in locked file cabinets under the control of authorized personnel.

Electronic records are safeguarded by permissions set to ''Authenticated Users'' which requires password login. The computer servers in which records are stored are located in Department of the Interior facilities that are secured by alarm systems and off-master key access. Access granted to individuals is password protected. The Department's Privacy Act Warning Notice appears on the monitor screens when users access the system. Backup tapes are stored in a locked and controlled room, in a secure off-site location. The tapes are kept on the Data Center Floor for several weeks and then shipped to Iron Mountain, a secure off site location. Access to the Data Center is controlled by key card and only a select number of people have access. The Security Plan addresses the Department's Privacy Act minimum safeguard requirements for Privacy Act systems at 43 CFR 2.51. A Privacy Impact Assessment was conducted to ensure that Privacy Act requirements and safeguard requirements are met. The assessment verified that appropriate controls and safeguards are in place. Personnel authorized to access the system must complete all Security, Privacy, and Records management training and sign the Rules of Behavior.

RETENTION AND DISPOSAL:

Paper records are covered by Indian Affairs Records Schedule (IARS) records series 3700, and have been scheduled as permanent records under NARA Job No. N1–075–05–1 approved on March 31, 2005. Records are maintained in the office of records for a maximum of 5 years after the end of the calendar year in which tribal membership rolls are completed, when enrollments are updated, when enrollment periods are completed, when memberships are closed, and when per capita payments are disbursed to tribal members. The records are then retired to the American Indian Records Repository which is a Federal Records Center. In accordance with the Indian Affairs Records Schedule, the subsequent legal transfer of records to the National Archives of the United States will be as jointly agreed to between the United States Department of the Interior and the National Archives and Records Administration (NARA).

A records retention schedule for the electronic records in this system is being developed and will be submitted to NARA for scheduling and approval. Pending approval by NARA, electronic records will be treated as permanent records. Data backups or copies captured on magnetic disk, diskette and computer tapes that are maintained separately from database files are temporary and are retained in accordance with General Records Schedules (GRS) 20/8 and 24/4(a).

SYSTEM MANAGER AND ADDRESS:

Deputy Bureau Director for Indian Services, 1849 C Street, NW., MS 4513–MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Records are obtained from individual Indians who are applying for or have been assigned interests of any kind in Indian tribes, bands, pueblos or corporations, and individuals who register to vote in Secretarial elections. Records are also obtained directly from tribal governing bodies of Federally Recognized Indian Tribes. These tribes may submit enrollment information by tribal resolutions and code sheets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–24808 Filed 9–26–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–L14300000–ET0000; HAG–11–0271; OROR–9651]

Public Land Order No. 7778; Extension of Public Land Order No. 6876; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6876 for an additional 20-year period. The extension is necessary to continue protection of the unique natural and ecological values of the Ashland Research Natural Area (RNA), and the recreational values and the investment of Federal funds at the Jackson Campground Extension and the Kanaka Campground, which would otherwise expire on September 9, 2011.

DATES: *Effective Date:* September 10, 2011.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Dianne Torpin, United States Forest Service, Pacific Northwest Region, 503–808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the Bureau of Land Management or Forest Service contact during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension in order to continue protection of the unique natural and ecological values of the Ashland RNA, the recreational values, and the investment of Federal funds at the Jackson Campground Extension and the Kanaka Campground. The withdrawal extended by this order will expire on September 9, 2031, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6876 (56 FR 46122 (1991)), which withdrew approximately 1,853.66 acres of National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the Ashland RNA, the recreational values, and investment of Federal funds at the Jackson Campground Extension and the Kanaka Campground, is hereby extended for an additional 20–year period until September 9, 2031.

Authority: 43 CFR 2310.4.

Dated: September 2, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–24707 Filed 9–26–11; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK–963000–L1410000–FQ0000; F–023812]

Public Land Order No. 7779; Partial Revocation of Secretarial Order Dated September 24, 1942; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects approximately 606 acres of public land withdrawn on behalf of the Federal Aviation Administration for Air Navigation Site No. 190 at Lake Minchumina, Alaska. The land is no longer needed for the purpose for which it was withdrawn.

DATES: *Effective Date:* September 27, 2011.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, Bureau of Land Management, Alaska State Office, 222 W. Seventh Avenue, #13, Anchorage, Alaska 99513–7504; 907–271–4682.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration has determined approximately 606 acres of Air Navigation Site No. 190 now exceeds its needs and has requested a partial revocation of the withdrawal. Upon revocation, the State of Alaska selection applications made under the Alaska Statehood Act and the Alaska National Interest Lands Conservation Act become effective without further action by the State, if such land is otherwise available. Land selected by, but not conveyed to, the State is subject to the terms and conditions of Public Land Order No. 5184 (37 FR 5588 (1972)), as amended, and any other withdrawals, applications, or segregations of record. While the land remains in Federal ownership, there is no significant restriction on subsistence uses. If the land ultimately is conveyed to the State of Alaska pursuant to the Alaska Statehood Act, that conveyance will not result in a significant restriction on subsistence uses. Even if any such restriction would result upon conveyance of the land to the State, conveyance of the land is authorized by Section 810(c) of the Alaska National Interest Lands Conservation Act.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated September 24, 1942, which withdrew public lands and reserved them on behalf of the Federal Aviation Administration for Air Navigation Site No. 190, is hereby revoked only insofar as it affects the following described land:

Fairbanks Meridian, Alaska

T. 12 S., R. 24 W.,
sections 5, 6, 7, 8, and 17, a parcel of land contained within U.S. Survey No. 2655, excluding:

(a) An area of land contained within said U.S. Survey No. 2655, and described as: Commencing at U.S. Location Monument No. 2655, monumented with an iron post, 2 inches diameter, with brass cap marked USLM + 2655 1944; thence N. 78° 59′ E., 461 feet to the True Point of Beginning; thence N. 45° 01′ W., 2,411 feet to the west boundary of U.S. Survey No. 2655; thence along the west boundary of U.S. Survey No. 2655 South, 2,162 feet to the witness meander corner No. 1, monumented with an iron post, 2 inches diameter, with brass cap marked WC S 2655 C1 MC 1944; thence continuing along the west boundary of U.S. Survey No. 2655 South 89.76 feet to the ordinary high water line of Lake Minchumina and point for meander corner No. 1; thence with the meanders of Lake Minchumina, at the ordinary high water line S. 58° 12′ E., 683 feet; thence with the meanders of Lake Minchumina at the ordinary high water line S. 45° 00′ E., 154 feet; thence N. 44° 59′ E., 1,437 feet to the True Point of Beginning, containing approximately 57.31 acres;

(b) An area of land contained within U.S. Survey No. 2655, and described as: Commencing at a 3¼-inch brass cap monument identified as U.S.L.M. 2655; thence N. 02° 22′ W., 2,493 feet to the True Point of Beginning; thence S. 76° 12′ E., 850 feet; thence N. 13° 48′ E., 899 feet, thence N. 76° 12′ W., 850 feet; thence S. 13° 48′ W., 899 feet to the True Point of Beginning, containing approximately 18 acres; and

(c) An area of land contained within U.S. Survey No. 2655, and described as: Commencing at a 3¼-inch brass cap monument identified as U.S.L.M. 2655; thence N. 34° 35′ E., 930 feet to the True Point of Beginning; thence N. 45° 23′ E., 699 feet; thence N. 44° 37′ W., 400 feet; thence S. 45° 23′ W., 699 feet; thence S. 44° 37′ E., 400 feet to the True Point of Beginning, containing approximately 6 acres.

The area described contains approximately 606 acres, more or less, at Lake Minchumina.

2. The State of Alaska applications for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e), become effective without further action by the State upon publication of this Public Land Order in the **Federal Register**, if such land is otherwise available. Land selected by, but not conveyed to, the State will be subject to Public Land Order No. 5184 (37 FR 5588 (1972)), as amended, and any other withdrawal or segregation of record.

Dated: September 6, 2011.

Rhea S. Suh

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–24706 Filed 9–26–11; 8:45 am]

BILLING CODE 1410–JA–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–807]

In the Matter of Certain Digital Photo Frames and Image Display Devices and Components Thereof; Notice of Institution of Investigation Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 24, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Technology Properties Limited, LLC of Cupertino, California. A letter supplementing the complaint was filed on September 14, 2011. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,976,623 (''the ′623 patent''); U.S. Patent No. 7,162,549 (''the ′549 patent''); U.S. Patent No. 7,295,443 (''the ′443 patent''); and U.S. Patent No. 7,522,424 (''the ′424 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 21, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital photo frames and image display devices and components thereof that infringe one or more of claims 1, 2, 9, 10, 17, and 18 of the ′623 patent; claims 1, 7, 11, 17, 19, and 21 of the ′549 patent; claims 1, 3, 4, 7, 9, 11, 12, and 14 of the ′443 patent; and claims 25, 26, 28, and 29 of the ′424 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, CA 95014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Action Electronics Co., Ltd., No. 198, Zhongyuan Road, Zhongli City, Taoyuan, County 320, Taiwan.

Aiptek International Inc., No. 19, Industry E. Road IV. Science Park, Hsinchu 300, Taiwan.

Aluratek, Inc., 14831 Myford Road, Tustin, CA 92780.

Audiovox Corporation, 180 Marcus Boulevard, Happauge, NY 11788.

CEIVA Logic, Inc., 214 E. Magnolia Boulevard, Burbank, CA 91502.

Circus World Displays Ltd., 4080 Montrose Road, Niagara Falls, L2H 1J9, Canada.

Coby Electronics Corporation, 1991 Marcus Avenue, Suite 301, Lake Success, NY 11042.

Curtis International, Ltd., 315 Attwell Drive, Etobicoke, Ontario, M9W 5C1, Canada.

Digital Spectrum Solutions, Inc., 17821 Mitchell N, Irvine, CA 92614.

Eastman Kodak Company, 343 State Street, Rochester, NY 14650.

Mustek Systems, Inc., 25, R&D Road II, Science-Based Industrial Park, Hsin Chu, Taiwan.

Nextar Inc., 1661 Fairplex Drive, La Verne, CA 91750.

Pandigital, 6375 Clark Avenue, Suite 100, Dublin, CA 94568.

Royal Consumer Information Products, Inc., 379 Campus Drive, Somerset, NJ 08875.

Sony Corporation, 1-7-1 Konan, Minato-ku, Tokyo 108–0075, Japan.

Sony Corporation of America, 550 Madison Avenue, New York, NY 10022.

Transcend Information, Inc., No. 70, XingZhong Road, NeiHu District, Taipei, Taiwan.

ViewSonic Corporation, 381 Brea Canyon Road, Walnut, CA 91789.

Win Accord Ltd., 12F, No. 225, Sec. 5, Nan Jing E. Road, Song Shan District, Taipei, Taiwan 105.

WinAccord U.S.A., Inc., 2526 Qume Drive, Suite 24, San Jose, CA 95131.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 21, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24730 Filed 9–26–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the National Marine Sanctuaries Act, The Park System Resource Protection Act, The Oil Pollution Act and The Clean Water Act

Notice is hereby given that on September 19, 2011, a proposed Consent Decree in *United States* v. *M/V COSCO BUSAN, et al.,* Civil Action No. 07–6045 SC, was lodged with the United States District Court for the Northern District of California.

In this action, the United States sought reimbursement of response costs, natural resource damages and assessment costs, and penalties resulting from the discharge of oil that occurred when the M/V COSCO BUSAN allided with the San Francisco-Oakland Bay Bridge on November 7, 2007. The allision caused an approximate 53,000 gallon oil spill into the San Francisco Bay. The settling governmental entities are the United States, the State of California, the City and County of San Francisco and the City of Richmond. The settling defendants are Regal Stone Limited, Fleet Management Ltd., the M/V COSCO BUSAN and John J. Cota. The Consent Decree also resolves the liability of Dr. Charles Calza, Dr. Alan Smoot, Dr. Eugene Belogorsky, the North Bay Sleep Medicine Institute, Inc., Patty Tucker, Longs Drug Stores California, LLC, Longs Drug Stores, LLC, Longs Drug Stores Corporation, CVS Caremark Corporation, Louie Chester, the San Francisco Bar Pilots, the San Francisco Bar Pilots Benevolent Association, Peter McIsaac and Russell Nyborg. The Consent Decree payment reimburses the governmental entities for response costs, damages to natural resources and assessment costs, requires payment to compensate for lost recreation uses, and imposes a State of California penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *M/V COSCO BUSAN, et al.,* D.J. Ref. 90–5–1–1–09349.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–24714 Filed 9–26–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Notice of Debarment: Manheim, Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice.

SUMMARY: This notice advises of the debarment of Manheim, Inc., Manheim Auctions Government Services, LLC, and all wholesale vehicle remarketing facilities located in the United States which are owned, either directly or indirectly, by Manheim, Inc. (hereinafter referred to collectively as ''Manheim Entities''), as eligible bidders on future Government contracts or extensions or substantive modifications of existing contracts, except as otherwise stated in the Consent Decree, the full terms of which are published below. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Patricia A. Shiu, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW., Room C–3325, Washington, DC 20210 (202–693–1106).

SUPPLEMENTARY INFORMATION: On September 13, 2011, the United States Department of Labor's Administrative Review Board approved a Consent Decree, pursuant to Executive Order 11246 (''Executive Order''); section 503 of the Rehabilitation Act of 1973, as amended (''section 503''); section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (''VEVRAA''); and the rules and regulations issued pursuant thereto.

Under the terms of the Consent Decree, the Manheim Entities and their officers, agents, employees and purchasers agree not to bid for, knowingly enter into, knowingly perform work, or knowingly provide services necessary to any future Government contracts or subcontracts, except as otherwise provided for in the Consent Decree below. Moreover, under the terms of the Consent Decree, the Manheim Entities and their officers, agents, employees and purchasers are debarred from receiving future contracts or subcontracts or extensions or substantive modifications of existing contracts or subcontracts. The debarment shall be lifted if Manheim satisfies the Director of OFCCP that it is in compliance with Executive Order, section 503, and the VEVRAA and their implementing regulations.

Dated: September 20, 2011, Washington, DC.

Les Jin,

Deputy Director, Office of Federal Contract Compliance Programs.

United States Department of Labor Administrative Review Board

Office of Federal Contract Compliance Programs, United States Department Of Labor, ARB Case No. 11–060 Plaintiff, ALJ Case No. 2011–OFC–00005. v. *Manheim, Inc., and Manheim Auctions Government Services, LLC d/b/a Manheim Government Services, Defendants.*

Amended Consent Decree

This Consent Decree is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter ''OFCCP''), and Defendants Manheim, Inc. f/k/a Manheim Auctions, Inc. (''Manheim'') and Manheim Auctions Government Services, LLC d/b/a Manheim Government Services (''MAGS'') (collectively, ''Defendants'') in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303) and Executive Order 12086 (43 FR 46501) (''Executive Order''); section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (''Rehabilitation Act'' or ''section 503''); section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4212 (''VEVRAA''); and the rules and regulations issued pursuant thereto. The Administrative Complaint alleges that, at all times pertinent thereto, Defendant MAGS, a party to contracts with the General Services Administration (''GSA'') totaling more than $100,000, was a government contractor and that Defendant Manheim was a government contractor by virtue of its operation as a ''single entity'' with government contractor MAGS. The Administrative Complaint further alleges that both Defendants violated the Executive Order, the Rehabilitation Act, and the VEVRAA by refusing to permit OFCCP access to Manheim or MAGS's facilities and otherwise permit OFCCP to conduct and complete a compliance review of Manheim and MAGS.

Part A. General Provisions

1. The record on which this Amended Consent Decree (''Consent Decree'') is based shall consist of the Complaint and all exhibits to the Complaint, the Answers, and this Consent Decree.

2. As meant herein, the term ''Manheim Auction Subsidiaries'' shall mean all wholesale vehicle remarketing facilities located in the United States which are owned, either directly or indirectly, by Manheim.

3. This Consent Decree shall become final and effective on the date it is signed by the Administrative Review Board (''Effective Date'').

4. This Consent Decree shall be binding upon Defendants, any and all officers, agents, employees and purchasers of Defendants, and all Manheim Auction Subsidiaries, and shall have the same force and effect as an Order made after a full hearing. Defendants waive their right to a hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties.

6. Subject to the performance by Defendants of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. Nothing herein shall be deemed an admission of wrongdoing, liability, or ''single entity'' status by Defendants.

Part B. Jurisdiction

7. This court has jurisdiction over this proceeding under sections 208 and 209 of the Executive Order, the Rehabilitation Act, the VEVRAA, 41 CFR 60–1.26, 60–741.65, 60–300.65, and 41 CFR part 60–30. Defendants admit to the jurisdiction of this Court over them regarding the subject matter of this action.

Part C. Specific Provisions

8. From the Effective Date of this Consent Decree, Defendants agree not to bid for, knowingly enter into, knowingly perform work, or knowingly provide services necessary to any future Government contracts or subcontracts, except as otherwise provided herein. By this agreement, Defendants are debarred from receiving future contracts or subcontracts or extensions or substantive modifications of existing contracts or subcontracts. In addition, no Federal agency may exercise any renewal option under an existing contract or subcontract listed at paragraph 9 below, unless the agency head determines that there is a compelling reason for such action pursuant to Federal Acquisition Regulation (''FAR'') 9.405–1(b), with the following exception: General Services Administration (''GSA'') Contract No. GS–30F–X0028 may, in the discretion of GSA, be renewed for one one-year or less Option Period after the expiration of the Base Period on September 30, 2011. The prohibitions in this paragraph shall be effective against Defendant MAGS, Defendant Manheim, and all Manheim Auction Subsidiaries located in the United States.

9. Defendants may continue to perform work only on the following existing contracts until the natural expiration of each contract, except as otherwise specified in paragraph 8, unless the agency head determines that there is a compelling reason for further renewal pursuant to FAR 9.405–1(b):

Army Air Force Exchange Service (AAFES)
Contract Number: HQ–08–SDZ–053
Expires September 27, 2011

General Services Administration (GSA)
Contract Number: GS–30F–X0028
Expires September 30, 2011

Worldwide Schedule for Logistics Services
Contract Number GS–10F–0013M
Expires September 30, 2011

United States Marshals Service (USMS)
E. District of Wisconsin
Contract Number: DJMS–08–D–0019
Expires February 29, 2012

United States Marshals Service (USMS)
E. District of Pennsylvania
Contract Number: DJMS–07–AFO–F–0008
Expires September 30, 2011

United States Marshals Service (USMS)
District of Puerto Rico
Contract Number: DJUSMS–11–0003
Expires December 31, 2011

United States Marshals Service (USMS)
N. District of Georgia
Contract Number: DJMS–07–AFO–F–0007

Expires September 30, 2011

United States Marshals Service (USMS)
Districts of Massachusetts, Maine, Rhode Island & New Hampshire
Contract Number: DJMS–09–D–0020
Expires May 31, 2012

United States Marshals Service (USMS)
Middle District of Florida
Contract Number: DJMS–05–D–0013
Expires December 31, 2011

United States Postal Service (USPS)
Contract Number: 1DVPMS–03–U–3941
Expires March 31, 2013

United States Department of the Navy
NAVFAC Hawaii, FSC Management and Facilities Services
Contract Number: N62478–08–D–2315
Expires March 31, 2012

United States Department of the Navy
NAVFAC Midwest Public Works Department
Contract Number: N40083–07–M–3003
Expires April 30, 2012

The Manheim Auction Subsidiaries may also perform services and/or provide facilities necessary to the Flynn-Jensen Company, LLC's subcontract with VSE Corp., Subcontract Number: VSE–TREAS–10–FJC, Prime Contract Number: TOS–11–C–001, or any renewals, extensions, substitutions, or modifications thereof, at the discretion of VSE and the Department of the Treasury, through and until December 31, 2011, but not thereafter. After December 31, 2011, unless and until the debarment described herein is lifted, no entity bound by this Consent Decree may perform services or provide goods necessary to any Government contract held, now or in the future, by the Flynn-Jensen Company, LLC.

10. Notice of this debarment shall be printed in the **Federal Register** on or after the Effective Date and shall include the full terms of this Consent Decree. In addition, on or after the Effective Date, OFCCP shall notify the Comptroller General of the United States (the ''Government Accountability Office'') that Defendants, including all Manheim Auction Subsidiaries, are ineligible for the award of any Government contracts or subcontracts, except as otherwise provided herein.

Part D. Reinstatement

11. Neither Defendant shall be allowed to bid for, knowingly enter into, knowingly perform work, or knowingly provide services, goods, or facilities necessary to a Government contract or subcontract, except as otherwise provided herein, unless that Defendant (the ''requesting Defendant'') or both of them (the ''requesting Defendants''), if applicable, request reinstatement to federal contractor status and satisfy the Director of OFCCP that it or they are in compliance with the Executive Order, Section 503, VEVRAA and their implementing regulations. To do so, at a minimum, any requesting Defendant must submit to a full compliance review.

12. OFCCP shall initiate within 30 days a compliance review upon the request of the requesting Defendant(s), including any on-site compliance evaluations at such Defendant(s)' facility or facilities, as necessary to determine whether the requesting Defendant(s) is in compliance at the time of the request with the terms of this Consent Decree and the terms of the Executive Order, Section 503, VEVRAA, and their implementing regulations. OFCCP shall notify the requesting Defendant(s) in writing, within 30 days of its completion of the compliance review, if there is a deficiency or a finding of compliance.

13. If OFCCP finds that the requesting Defendant(s) has complied with the terms of this Consent Decree and with the terms of the Executive Order, Section 503, VEVRAA and their implementing regulations, the prohibitions in paragraph 8 above and otherwise herein shall be lifted as to the requesting Defendant(s), and such Defendant(s) shall be free to enter into future Government contracts and subcontracts. Within 30 days of OFCCP's finding of compliance (*see* paragraph 12 above), notice of the reinstatement shall be made to the Government Accountability Office, and notice of reinstatement shall be printed in the **Federal Register**.

14. If OFCCP finds that the requesting Defendant(s) has not complied with the terms of the Consent Decree or with the terms of the Executive Order, Section 503, VEVRAA and their implementing regulations, OFCCP will notify the requesting Defendant(s) within 30 days of its finding (*see* paragraph 12 above) that the prohibitions in paragraph 8 above and otherwise herein shall not be lifted and shall remain in effect until the requesting Defendant(s) successfully demonstrates compliance with the Consent Decree, the Executive Order, Section 503, VEVRAA and their implementing regulations. The requesting Defendant(s) may file a motion with the Administrative Law Judge for review of the Director's decision, and Defendants may request a hearing at which the sole issue will be whether the requesting Defendant(s) have complied with the terms of this Consent Decree and the Executive Order, Section 503, VEVRAA and their implementing regulations.

Part E. Implementation and Enforcement of the Decree

15. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of 24 months from the date this Consent Decree becomes final. If any motion related to this Consent Decree is pending before the Office of Administrative Law Judges 24 months from the date this Consent Decree becomes final, jurisdiction shall continue beyond 24 months and until such time as the pending motion is finally resolved.

16. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by Plaintiff or Defendants, as appropriate, the application or motion may be presented to the Court without hearing and the proposed Order may be implemented immediately. If any party hereto opposes an application or motion, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

17. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

It is so *ordered,* this 13th day of September 2011.

PAUL M. IGASAKI,
Chief Administrative Appeals Judge Law Judge.

E. Cooper Brown,
Deputy Chief Administrative Appeals Judge.

SO AGREED.

ON BEHALF OF MANHEIM, INC. f/k/a MANHEIM AUCTIONS, INC. and MANHEIM AUCTIONS GOVERNMENT SERVICES, LLC
d/b/a MANHEIM GOVERNMENT SERVICES:

By: _____

Jason S. McCarter.

Matthew T. Parrish, DOW LOHNES PLLC, Six Concourse Parkway, Suite 1800, Atlanta, Georgia 30328, (770) 901–8800, (770) 901–8874 (FAX). -and-

John C. Fox, FOX, WANG & MORGAN P.C., 160 West Santa Clara St., Suite 700, San Jose, California 95113, (408) 844–2350, (408) 844–2351 (FAX).

Attorneys for Defendants

SOL Case No. 10–04112

ON BEHALF OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS:

M. PATRICIA SMITH, Solicitor of Labor

STANLEY E. KEEN, Regional Solicitor

CHANNAH S. BROYDE, Counsel

By: _____
LYDIA A. JONES
Attorney
Office of the Solicitor, U.S. Department of Labor, 61 Forsyth Street, S.W., Room 7T10, Atlanta, GA 30303, Telephone: (404) 302–5435, (404) 302–5438 (FAX).
Attorneys for the Secretary of Labor, United States Department of Labor.

[FR Doc. 2011–24810 Filed 9–26–11; 8:45 am]

BILLING CODE 4510–45–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Office of Trade and Labor Affairs; National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements; Notice of Open Meeting

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of Open Meeting, October 13, 2011.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5. U.S.C. app. 2, the Office of Trade and Labor Affairs (OTLA) gives notice of a meeting of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (''Committee'' or ''NAC''), which was established by the Secretary of Labor.

During the inaugural meeting of the NAC on August, 25, 2011, a Sub-Committee was established to provide recommendations on how the United States can facilitate full implementation of the recommendations contained in the White Paper of the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic. The purpose of the meeting is to present the recommendations developed by the Sub-Committee to the entire Committee. The Committee will review, discuss and finalize a set of recommendations for the Secretary of Labor through the Bureau of International Labor Affairs (ILAB) that will be included in the second Biennial CAFTA–DR Report to Congress.

DATES: The Committee will meet on Thursday, October 13, 2011 from 4 p.m. to 6 p.m.

ADDRESSES: The Committee will meet at the U.S. Department of Labor, 200 Constitution Avenue, NW., Deputy Undersecretary's Conference Room, Washington, DC 20210. Mail comments, views, or statements in response to this notice to Paula Church Albertson, Office of Trade and Labor Affairs, ILAB, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5004, Washington, DC 20210; phone (202) 693–4789; fax (202) 693–4784.

FOR FURTHER INFORMATION CONTACT: Paula Church Albertson, Designated Federal Officer, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5004, Washington, DC 20210; phone (202) 693–4789 (this is not a toll free number). Individuals with disabilities wishing to attend the meeting should contact Ms. Albertson no later than October 6, 2011, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: NAC meetings are open to the public on a first-come, first-served basis, as seating is limited. Attendees must present valid identification and will be subject to security screening to access the Department of Labor for the meeting.

Agenda: The NAC agenda will include a report from the Subcommittee that developed ''Recommendations on how the United States can facilitate full implementation of the recommendations contained in the White Paper,'' as well as deliberations on or discussions of that report.

Public Participation: Written data, views, or comments for consideration by the NAC on the agenda listed above should be submitted to Paula Church Albertson at the address listed above. Submissions received by October 6, 2011, will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits.

Signed at Washington, DC, the 22nd day of September 2011.

Carol Pier,

Associate Deputy Undersecretary for International Affairs.

[FR Doc. 2011–24902 Filed 9–26–11; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the *''Local Area Unemployment Statistics (LAUS) Program.''* A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before November 28, 2011.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS has been charged by Congress (29 U.S.C. Sections 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Workforce Agencies.

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Investment Act and the Public Works and Economic Development Act, among others.

The estimates also are used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be

accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the LAUS program insofar as they insure and measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Current Action

Office of Management and Budget clearance is being sought for an extension of the information collection request that makes up the LAUS program. All aspects of the information collection are conducted electronically. All data are entered directly into BLS-provided systems.

The BLS, as part of its responsibility to develop concepts and methods by which States prepare estimates under the LAUS program, developed a manual for use by the States. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, provides input information, and discusses the theoretical and empirical basis for each procedure. This manual is updated on a regular schedule. The LAUS program implemented a major program redesign in January 2005. The Redesign was announced in the **Federal Register** on November 8, 2004.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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 submissions of responses.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Affected Public: State governments.

	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
LAUS 3040	52 respondents with 7320 reporting units	13	95,160	1.5	142,740
LAUS 8	52	11	572	1	572
LAUS 15	6	1	6	2	12
LAUS 16	52	1	52	1	52
Totals			95,790		143,376

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 21st day of September 2011.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–24719 Filed 9–26–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before October 27, 2011.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Facsimile). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–007–M.

Petitioner: Riverside Cement Co., 19409 National Trail Highway, Oro Grande, California 92368.

Mine: Oro Grande Quarry, MSHA Mine I.D. No. 04–00011, located in San Bernardino County, California.

Regulation Affected: 30 CFR 56.6131 (Location of explosive material storage facilities).

Modification Request: The petitioner requests a modification of the existing standard to enable uncharged cardox safety heaters to be stored in the Type 2 magazine located on the plant's preheater tower. The petitioner operates a cement plant that manufactures cement by introducing crushed limestone to a calcining process that consists of a kiln and a preheater system. The petitioner states that:

(1) The heater recaptures kiln gases to preheat the crushed limestone, which is fed through a series of cone shaped vessels before the material enters the kiln where it is fired to approximately 2,200 degrees Fahrenheit.

(2) This material can clog within the system, as happens with silos and other temporary containers of large volumes of crushed material.

(3) A principal technology for unclogging vessels involves the use of a product referred to as a cardox safety heater.

(4) Although the Bureau of Alcohol, Tobacco and Firearms (ATF) classifies cardox safety heaters as ''low explosives'' that are only required to be stored in Type 4 magazines, MSHA does not have a similar exception for this new technology. MSHA requires that the cardox safety heaters be maintained with the high explosives in the Type 1 magazine located in the quarry.

(5) Consistent with the Department of Transportation classification of 1.4S, the cardox safety heater is considered a ''non-mass-detonating product'' that can be shipped in a normal shipping package with no special precautions. Cardox safety heaters are hand delivered to the Oro Grande cement plant by a United Parcel Service (UPS) person.

(6) Prior to August 2009, upon receiving a package containing cardox safety heaters, the package would be immediately taken to the type 2 magazine located on the sixth floor of the preheater tower where it is used to deal with plugs within the preheater system.

(7) Since August 2009, in consultation with MSHA, the following procedures are used:

(a) When the storeroom personnel receive the cardox safety heaters from the UPS delivery person, they notify production personnel.

(b) The production personnel transport the heaters to the quarry magazine.

(c) When a blockage of material occurs in the preheater tower, the production supervisor drives to the quarry magazine, retrieves the cardox safety heater, and transports the heater to the Type 2 magazine located on the sixth floor of the preheater tower.

(d) The Type 2 magazine can only be used as a day box, so any unused cardox safety heaters must be returned to the quarry magazine at the end of the day.

(e) Depending on plug conditions, this transportation process can be repeated multiple times in the same day, or during any given week.

(f) Along with the additional transport exposure, the reopening and closing of the cardox safety heater ports increases the opportunity for preheater tower personnel to be exposed to open ports and hot material.

(8) Extra handling and transportation also increases the opportunity for damage to the generators, which if not detected could result in misfires.

(9) The current standard requires unnecessary risk of increased exposure to ''explosives,'' to hot material, and to the potential for misfires that will result in a substantial diminution of safety.

The petitioner proposes the following method to minimize the hazard to miners who transport cardox safety heaters from the magazine building to the preheater tower, personnel along the route, and the miners working on the preheater tower:

(1) Safely store cardox safety heaters in a Type 2 magazine. Type 2 magazines are designed to store high grade explosives that are more dangerous than a cardox safety heater, classified by ATF as a low explosive.

(2) Provide greater protection than the ATF requires because the Type 2 metal indoor magazine includes an inner lining of non-sparking material, a door equipped with two tamper proof locks that are independently keyed, and hinges and legs that are properly grounded.

(3) Store the Type 2 magazine inside a locked, well-ventilated, and grounded metal building on the sixth floor of the preheater, which is 266 feet above ground.

(4) Although a miner must charge the cardox safety heater before it poses a risk of danger to other miners, once it is charged, this risk is less than most explosives. Cardox safety heaters are low grade explosives that use CO^2, a gas that is commonly found in fire extinguishers.

The petitioner states that the proposed cardox safety heater storage procedures set out in this petition constitute a fully appropriate, effective, and safe method for achieving the level of safety provided by the existing standard. Persons may review a complete description of petitioner's alternative method and procedures at the MSHA address listed in this petition. The petitioner asserts that the alternative method would enhance the safety of miners on mine property by ensuring that forces generated by a storage facility explosion would not create a hazard to miners.

Docket Number: M–2011–028–C.

Petitioner: West Virginia Mine Power, Inc., P.O. Box 574, Rupert, West Virginia 25984–0574.

Mine: Mountaineer Pocahontas Mine No. 1, MSHA I.D. No. 46–09172, located in Greenbrier County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray system).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. As an alternative to using the blow-off dust covers, the petitioner proposes to:

(1) Once each week, have a person trained in the testing procedures specific to the deluge-type water spray fire suppression systems used at each belt drive:

(a) Conduct a visual examination of each deluge-type water spray fire suppression system;

(b) Conduct a functional test of the deluge-type water spray fire suppression system by actuating the system and watching its performance; and

(c) Record the result of the examination and functional test in a book maintained on the surface. The record will be made available to the authorized representative of the Secretary and retained at the mine for one year.

(2) Any malfunction or clogged nozzle detected as a result of the weekly examination or functional test will be corrected immediately.

(3) The procedure used to perform the functional test will be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.

The petitioner states that mining is in the Pocahontas No. 6 coal seam, where the seam height averages 42'' to 48'', and the conveyor belt is installed adjacent to the track and contained in the same entry with an overall mining height approximately 54''. The petitioner asserts that the proposed alternative method will provide a measure of protection equal to or greater than that of the existing standard.

Docket Numbers: M–2011–029–C.

Petitioner: West Virginia Mine Power, Inc., P.O. Box 574, Rupert, West Virginia 25984–0574.

Mine: Mountaineer Pocahontas Mine No. 3, MSHA I.D. No. 46–09210, located in Greenbrier County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray system).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. As an alternative to using the blow-off dust covers, the petitioner proposes to:

(1) Once each week, have a person trained in the testing procedures specific to the deluge-type water spray fire suppression systems used at each belt drive:

(a) Conduct a visual examination of each deluge-type water spray fire suppression systems;

(b) Conduct a functional test of the deluge-type water spray fire suppression systems by actuating the system and watching its performance; and

(c) Record the result of the examination and functional test in a book maintained on the surface. The record will be made available to the authorized representative of the Secretary and retained at the mine for one year.

(2) Any malfunction or clogged nozzle detected as a result of the weekly examination or functional test will be corrected immediately.

(3) The procedure used to perform the functional test will be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.

The petitioner states that mining is in the Beckley coal seam, where the seam height averages 44'' to 50'', and the conveyor belt is installed adjacent to the roadway with ventilation directed from the section to the outside. The petitioner asserts that the proposed alternative method will provide a measure of protection equal to or greater than that of the existing standard.

Docket Number: M–2011–030–C.

Petitioner: Utah American Energy, Inc., P.O. Box 910, East Carbon, Utah 84520.

Mine: Lila Canyon Mine, MSHA I.D. No. 42–02241, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.350(a) (Belt air course ventilation).

Modification Request: The petitioner requests a modification of the existing standard to permit the belt air course to be used as a return air course and for the belt entry to be used to ventilate the longwall working section. The petitioner states that:

(1) Application of the existing standard results in a diminution of safety to the miners. The two-entry longwall development mining system reduces the likelihood of coal bumps, roof falls, and other hazards related to mining seams under deep cover up to 3,000 feet, rugged topography, or highly stressed ground conditions. Therefore, developing with additional entries to comply with isolation of the belt entry from a separate return entry and diverting belt air directly into a return air course diminishes the safety of the miners as compared to utilizing the belt entry as a return air course during development mining. The use of the belt entry to aid in the ventilation of the working section will help in diluting and rendering harmless methane gas that is released in the mine atmosphere during the mining cycle.

(2) An atmospheric monitoring system (AMS) incorporating diesel-discriminating (carbon monoxide and nitric oxide) sensors for early fire warning detection will be installed in the primary (intake) escapeway and belt entry. These AMS systems will be installed, operated, examined, and maintained as required by the application of 30 CFR 75.351.

(3) Actions taken in response to the AMS malfunction and alert or alarm signal will be in compliance with 30 CFR 75.352.

(4) Wireless tracking and communication systems will be used in the two-entry system as outlined in the Emergency Response Plan.

(5) An (AMS) for early warning fire detection will be used throughout the two-entry system. All sensors that are part of the AMS will be diesel-discriminating (carbon monoxide and nitric oxide) sensors.

(6) The belt air course will be separated with permanent ventilation controls from return air courses and from other intake air courses except as provided with this petition. The belt air course is defined as the entry in which a belt is located and any adjacent entry or entries not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt entry, terminating at a return regulator, a section loading point, or the surface.

(7) The maximum air velocity in the belt entry will be no greater than 500 feet per minute, unless otherwise approved in the mine ventilation plan.

(8) Air velocities will be compatible with all fire detection systems and fire suppression systems used in the belt entry.

(9) The belt entry, the primary escapeway, and other intake entry or entries used will be equipped with an AMS that is installed, operated, examined, and maintained as specified within this petition.

(10) All miners will be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of any AMS alert or alarm signal. This training will be conducted prior to the development of any portion of the two-entry mining system, as part of a miner's Part 48 new miner training, experienced miner training, or annual refresher training.

(11) The AMS will activate an alarm signal if the total concentration of uncorrected carbon monoxide measured by any sensor exceeds or is equal to 50 parts per million (ppm). This concentration will represent all the carbon monoxide present in the sensor's atmosphere, including carbon monoxide from diesel engines.

(12) Mantrip cars, personnel carriers, or other transportation equipment will be maintained on or near the working section and on or near areas where mechanized mining equipment is being installed or removed, be of sufficient capacity to transport all persons who may be in the area, and will be located within 300 feet of the section loading point or proposed section loading point.

(13) Fire doors designed to quickly isolate the working section will be constructed in the two entries for use in emergency situations. The fire doors will be maintained operable throughout the duration of the two-entry panel. A

plan for the emergency closing of these fire doors, notification of personnel, and deenergization of electric power inby the doors will be included in the mine emergency evacuation and firefighting program of instruction plan.

(14) Two separate lines or systems for voice communication will be maintained in the two-entry mining section. Mine pager phones will be installed every 1,000 feet within one crosscut of the location of the diesel-discriminating sensor in the belt and intake entries. The two systems will not be routed through the same entry.

(15) An approved wireless and tracking communication system will be used as a communication link between the AMS operator, the designated person on each working section, all diesel equipment operators in each active two-entry panel gate roads, and any person investigating an alert condition. Methods of personnel tracking and communications will be subject to approval of the District Manager.

(16) In addition to self-contained self-rescuers (SCSRs) specified in the Lila Canyon Emergency Response Plan, at least one SCSR will be available for each person on the working section at all times and will be carried into the section and carried on the section, or stored on the section while advancing the two-entry development.

(17) During longwall retreat mining, in addition to SCSRs specified in the Lila Canyon Emergency Response Plan, at least two SCSRs will be available for each regularly assigned person on the working section. One will be stored near the face in the headgate entries at a readily accessible location and one will be stored near the tailgate entries.

(18) In addition to the requirements of 30 CFR 75.1100–2(b), fire hose outlets with valves every 300 feet will be installed along the intake entry. At least 500 feet of fire hose with fittings and nozzles suitable for connection with the outlets will be stored at each strategic location along the intake entry. The locations will be specified in the mine emergency evacuation and firefighting program of instruction plan.

(19) Compressor stations and unattended portable compressors will not be located in the two-entry panel.

(20) The details for the fire detection system and methane monitoring system, including the type of monitor and specific sensor location on the mine map, will be included in the ventilation plan required by 30 CFR 75.370. The District Manager may require additional diesel-discriminating sensors, carbon monoxide sensors, or methane sensors to be installed as part of the ventilation plan to ensure the safety of the miners in any part of the two-entry system.

(21) Lifelines that meet the requirements of 30 CFR 75.380 will be provided in the primary and secondary escapeways during two-entry development, longwall setup, recovery, and longwall retreat mining.

(22) The AMS will activate an alarm signal if the total concentration of uncorrected carbon monoxide measured by any sensor exceeds or is equal to 50 ppm. This concentration will represent all the carbon monoxide present in the sensor's atmosphere, including carbon monoxide from diesel engines.

The petitioner states that prior to implementation of this petition, all affected personnel will complete training on the following:

(1) The fire suppression systems used on diesel equipment used in the two-entry system;

(2) Precautions for working around the hydraulic pumping station when the hydraulic pumping station for the longwall supports is located in the two-entry system;

(3) All conditions specified by this petition;

(4) Procedures for emergency closing of fire doors and permanent ventilation control devices, notification of personnel, and deenergization of electric power within the longwall district; and

(5) Conditions specified in the approved ventilation plan.

The petitioner further states that the terms and conditions of the petition will not apply during the time period from completion of the development mining of the two-entry longwall panel until the beginning of the longwall equipment set-up activities, provided the conveyor belt in the two-entry panel is not energized. During this time period, all other mandatory standards will apply.

Persons may review a complete description of petitioner's alternative method and procedures at the MSHA address listed in this petition. The petitioner asserts that the proposed alternative method will always guarantee the miners affected no less protection than is provided by the standard and application of the standard will result in a diminution of safety to the miners.

Dated: September 21, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–24727 Filed 9–26–11; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, October 12, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The One item is open to the public.

MATTER TO BE CONSIDERED:

8345 International Investigations: Global Collaboration with Domestic Impact.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, October 7, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: andi Bing, (202) 314–6403 or by e-mail at *bingc@ntsb.gov.*

Dated: Friday, September 23, 2011.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2011–24992 Filed 9–23–11; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; North Anna Power Station, Unit Nos. 1 and 2; Exemption

1.0 Background

Virginia Electric Power Company (VEPCO, the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station, Unit Nos. 1 and 2 (North Anna) respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility consists of two pressurized water reactors located in Louisa County, Virginia.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 26, ''Fitness

For Duty Programs,'' Subpart I, ''Managing Fatigue,'' requires that individuals described in 10 CFR 26.4(a)(1) through (a)(5) are subject to the work hour controls provided in 10 CFR 26.205. By letter dated February 10, 2011 (Agencywide Documents Access and Management System (ADAMS), Accession No. ML110450583), and supplemented March 10, 2011 (ADAMS Accession No. ML110740442),and pursuant to 10 CFR 26.9, VEPCO, doing business as Dominion, requested an exemption from the requirements of 10 CFR 26.205(c) and (d) during declarations of severe weather conditions such as tropical storm and hurricane force winds at the North Anna site. A subsequent response to requests for additional information (RAI) is dated May 26, 2011 (ADAMS Accession No. ML111470265).

The requested exemption applies to individuals who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5) who are designated to perform work as a member of the North Anna hurricane response organization (HRO). The exemption request states that the station HRO typically consists of enough individuals to staff two 12-hour shifts of workers consisting of personnel from operations, maintenance, engineering, emergency planning, radiation protection, chemistry, site services and security to maintain the safe and secure operation of the plant.

Entry conditions for the requested exemption occur when the site activates the station HRO and the Site Vice President (or his designee) determines that travel conditions to the site will potentially become hazardous such that HRO staffing will be required based on verifiable weather conditions. Verifiable weather conditions are defined in the exemption request as when the National Weather Service issues an Inland High Wind Warning for Hurricane Force Winds for Louisa County or when the Dominion Weather Center projects tropical storm or hurricane force winds onsite within 12 hours.

After the high wind conditions pass, wind damage to the plant and surrounding area might preclude sufficient numbers of individuals from immediately returning to the site. Additionally, if mandatory civil evacuations were ordered, this would also delay the return of sufficient relief personnel. The exemption request states that the exemption will terminate when hurricane watches and warnings or inland hurricane watches and warnings have been cancelled; when weather conditions and highway infrastructure support safe travel; and when the Site Vice President or his designee determine that sufficient personnel who perform the duties identified in 10 CFR 26.4(a)(1) through (a)(5) are available to restore normal shift rotation and thereby meet the requirements of 10 CFR 26.205(c) and (d).

3.0 Discussion

Pursuant to 10 CFR 26.09, the Commission may, upon application of an interested person or on its own initiative, grant exemptions from the requirements of 10 CFR Part 26 when the exemptions are authorized by law and will not endanger life or property or the common defense and security, or are otherwise in the public interest.

Authorized by Law

The exemption being requested for North Anna would allow the licensee to not meet the work hour control requirements of 10 CFR 26.205(c) and (d), which would allow the licensee to sequester specific individuals on site, prior and subsequent to severe weather conditions such as tropical storms and hurricanes. No law exists which precludes the activities covered by this exemption request. As stated above, 10 CFR 26.09 allows the NRC to grant exemptions from the requirements of 10 CFR Part 26. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Endangerment of Life or Property and Otherwise in the Public Interest

This exemption request expands on an exception that is already provided in 10 CFR Part 26, during declared emergencies, and allows the licensee to not meet the requirements in 10 CFR 26.205(c) and (d) during time periods just prior and subsequent to the existing exception (10 CFR 26.207(d)). Granting this exemption will allow the licensee to ensure that the control of work hours does not impede the ability to use whatever staff resources may be necessary to respond to a severe weather event to ensure the plant reaches and maintains a safe and secure status. Therefore, this exemption will not endanger life or property or the common defense and security. Thus, this exemption request is in the interest of the public health and safety.

The Fatigue Management provisions found in 10 CFR part 26 subpart I are designed as an integrated approach to managing both cumulative and acute fatigue through a partnership between licensees and individuals. It is the responsibility of the licensees to provide training to individuals regarding fatigue management. It is also the responsibility of the licensee to provide covered workers with work schedules that are consistent with the objective of preventing impairment from fatigue due to duration, frequency or sequencing of successive shifts. Individuals are required to remain fit-for-duty while at work.

- Section 26.205(c) is the requirement to schedule individuals work hours consistent with the objective of preventing impairment from fatigue due to duration, frequency or sequencing of successive shifts. The requirement to schedule is important as the work hour controls, contained in 10 CFR 26.205, are not necessarily sufficient to ensure that individuals will not be impaired owing to the effects of fatigue.
- Section 26.205(d) provides the actual work hour controls. Work hour controls are limits on the number of hours an individual may work; limits on the minimum break times between work periods; and limits for the minimum number of days off an individual must be given.
- Section 26.205(b) is the requirement to count work hours and days worked. 10 CFR 26.205(d)(3) is the requirement to look back into the ''calculation period'' so that all work hours can be included in appropriate work hour calculations, when a covered individual resumes covered work.
- Section 26.207(d) provides an allowance for licensees to not meet the requirements of Sec. 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan.

North Anna is located in Louisa County, Virginia, and is approximately 40 miles north-northwest of Richmond, Virginia. Historical analysis of severe weather in the vicinity of the station shows that there has been approximately an average of two tropical storms or hurricanes every five years that have passed within 100 nautical miles of the site. Consequently, there is a reasonable likelihood of North Anna being affected by severe wind events. The proposed exemption would support effective response to severe weather conditions when travel to and from the North Anna site may not be safe or even possible.

During these times, the North Anna HRO staff typically consists of enough individuals to staff two 12-hour shifts of workers consisting of personnel from operations, maintenance, engineering, emergency planning, radiation protection, chemistry, site services and security to maintain the safe and secure operation of the plant. This exemption would be applied to the period

established by the entry and exit conditions regardless of whether the Emergency Plan is entered or not. Therefore, North Anna's exemption request can be characterized as having three parts: (1) High-wind exemption encompassing the period starting with the initiating conditions to just prior to declaration of an unusual event, (2) a period defined as immediately following a high-wind condition, when an unusual event is not declared, but when a recovery period is still required, and (3) a recovery exemption immediately following an existing 10 CFR 26.207(d) exception as discussed above.

Once North Anna has entered into a high-wind exemption or 10 CFR 26.207(d) exception, it would not need to make a declaration that it is invoking the recovery exemption. As a tropical storm or hurricane approaches landfall, high wind speeds in excess of wind speeds that create unsafe travel conditions are expected. The National Hurricane Center defines a hurricane warning as an announcement that hurricane conditions (sustained winds of 74 mph or higher) are expected somewhere within the specified coastal area within a 24-hour period. Severe wind preparedness activities become difficult once winds reach tropical storm force, a tropical storm warning is issued 36 hours in advance of the anticipated onset of tropical-storm-force winds (39 to 73 mph). Lessons learned that are included in NUREG–1474, ''Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992,'' include the acknowledgement that detailed, methodical preparations should be made prior to the onset of hurricane force winds. The NRC staff finds the North Anna proceduralized actions are consistent with those lessons learned.

The entry conditions for the requested exemption could have been exceeded, yet wind speeds necessary for the declaration of an unusual event may not have been reached. This circumstance may still require a recovery period. Also, high winds that make travel unsafe but that fall below the threshold of an emergency, could be present for several days. After the high wind condition has passed, sufficient numbers of personnel may not be able to access the site to relieve the sequestered individuals. An exemption during these conditions is consistent with the intent of the 10 CFR 26.207(d) exemption. Following a declared emergency, under 10 CFR 26.207(d), due to high wind conditions, the site may not be accessible by sufficient numbers of personnel to allow relief of the sequestered individuals. Once the high wind conditions have passed and the unusual event exited, a recovery period might be necessary. An exemption during these circumstances is consistent with the intent of 10 CFR 26.207(d).

The licensee's RAI response letter of May 26, 2011, states that the HRO shift start times will be pre-planned and consistent and that the hurricane response plan is being revised to emphasize the need for pre-planned and consistent work shift start times to better facilitate fatigue management. The RAI response also states that the hurricane response plan will be updated to include that the HRO staff will be provided with an opportunity for restorative rest of at least 10 hours when off and that these individuals will not be assigned any duties when off-shift.

The exemption request specifies that the exemption is not for discretionary maintenance activities. The exemption request states that the exemption would provide for use of whatever plant staff and resources may be necessary to respond to a plant emergency and ensure that the units achieve and maintain a safe and secure status and can be safely restarted. The exemption request also states that maintenance activities for structures, systems and components that are significant to public health and safety will be performed, if required. The NRC staff finds the exclusion of discretionary maintenance from the exemption request to be consistent with the intent of the exemption.

In its exemption request the licensee committed to maintain the following guidance in a North Anna site procedure:

- The conditions necessary to sequester site personnel that are consistent with the conditions specified in the North Anna exemption request.
- The provisions for ensuring that personnel who are not performing duties are provided an opportunity as well as accommodations for restorative rest.
- The condition for departure from this exemption, consistent with the Site Vice President's (or his designee's) determination that adequate staffing is available to meet the requirements of Part 26.205(c) and (d).

In its RAI response letter the licensee committed to maintain the following guidance in its hurricane response procedure:

- Guidance that emphasizes the need for pre-planned and consistent work-shift start times to better facilitate fatigue management.
- Guidance that states that the Station Hurricane Response Organization staff will be provided an opportunity for at least 10 hours of restorative rest when off-shift and should not be assigned any duties when off-shift.

When the exemption period(s) ends, the licensee is immediately subject to the scheduling requirements of 10 CFR 26.205(c) and the work hour/rest break/days off requirements of 10 CFR 26.205(d), and must ensure that any individual performing covered work complies with these requirements. Section 26.205(d)(3) requires the licensee to ''look back'' over the calculation period and count the hours the individual has worked and the rest breaks and days off he/she has had, including those that occurred during the licensee-declared emergency. Hours worked must be below the maximum limits and rest breaks must be above the minimum requirements in order for the licensee to allow the individual to perform covered work. Days off and hours and shifts worked during the licensee-declared emergency and the exempted period before and after the declared emergency, would be counted as usual in the establishment of the applicable shift schedule and compliance with the minimum-days-off requirements.

Granting these exemptions is consistent with 10 CFR 26.207(d) Plant Emergencies which allows the licensee to not meet the requirements of 10 CFR 26.205 (c) and (d) during declared emergencies as defined in the licensee's emergency plan. The Part 26 Statement of Considerations in the **Federal Register** on March 31, 2008, page 17148, states that ''Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of § 26.205(c) and (d).'' The objective of the exemption is to ensure that the control of work hours do not impede a licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status. The actions described in the exemption request and submitted procedures are consistent with the recommendations in NUREG–1474, ''Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992.'' Also consistent with NUREG–1474, NRC staff expects the licensee would have completed a reasonable amount of hurricane preparation prior to the need to sequester personnel, in order to

minimize personnel exposure to high winds.

The NRC staff has reviewed the exemption request from certain work hour controls during conditions of high winds and recovery from high wind conditions. Based on the considerations discussed above, the NRC staff has concluded that (1) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed exemption (2) such activities will be consistent with the Commission's regulations and guidance, and (3) the issuance of the exemption will not be contrary to the common defense and security or to the health and safety of the public.

Consistent With Common Defense and Security

This change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.09, granting an exemption to the licensee from the requirements in 10 CFR 26.205(c) and (d) during severe wind events such as tropical storms and hurricanes and bounded by the entry and exit conditions of the exemption request, by allowing North Anna to sequester individuals to ensure the plant reaches and maintains a safe and secure status, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants Virginia Electric Power Company an exemption from the requirement of 10 CFR 26.205(c) and (d) during periods of severe winds.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment published in the **Federal Register** on August 31, 2011 (76 FR 54259).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of September 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–24776 Filed 9–26–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 26, and October 3, 10, 17, 24, 31, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 26, 2011

Tuesday, September 27, 2011

8:55 a.m. Affirmation Session (Public Meeting) (Tentative).

a. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4)—Appeal of LBP–10–21 (Tentative).

b. *Luminant Generation Company LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), Intervenors' Petition for Review Pursuant to 10 CFR § 2.341 (Mar. 11, 2011) (Tentative).

c. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), Staff Petition for Review of LBP–10–20 (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9 a.m. Mandatory Hearing—Southern Nuclear Operating Co., *et al.;* Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4, and Limited Work Authorizations (Public Meeting). (Contact: Rochelle Bavol, 301–415–1651.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 3, 2011—Tentative

Thursday, October 6, 2011

9 a.m. Briefing on NRC International Activities (Public Meeting). (Contact: Karen Henderson, 301–415–0202.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 10, 2011—Tentative

Tuesday, October 11, 2011

9 a.m. Briefing on the Japan Near Term Task Force Report—Prioritization of Recommendations (Public Meeting). (Contact: Rob Taylor, 301–415–3172.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, October 12, 2011

9 a.m. Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to as Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting). (Contact: Rochelle Bavol, 301–415–1651.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 17, 2011—Tentative

Tuesday, October 18, 2011

9 a.m. Briefing on Browns Ferry Unit 1 (Public Meeting). (Contact: Eugene Guthrie, 404–997–4662.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, October 20, 2011

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Week of October 24, 2011—Tentative

There are no meetings scheduled for the week of October 24, 2011.

Week of October 31, 2011—Tentative

Tuesday, November 1, 2011

9 a.m. Briefing on the Fuel Cycle Oversight Program (Public Meeting). (Contact: Margie Kotzalas, 301–492–3550.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable

accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 22, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–24938 Filed 9–23–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–77; Order No. 866]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Martinsburg, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 3, 2011; *deadline for notices to intervene:* October 17, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 the **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 INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 16, 2011, the Commission received a petition for review of the Postal Service's determination to close the Martinsburg post office in Martinsburg, New York. The petition was filed by the Citizens of Martinsburg (Petitioner) and is postmarked September 9, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–77 to consider Petitioner's appeal. If Petitioner would like to further explain its position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 21, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to adequately consider the economic savings resulting from the closure. *See* 39 U.S.C. 404(d)(2)(A)(iv).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 3, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 3, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 17, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 3, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than October 3, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 16, 2011	Filing of Appeal.
October 3, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 30, 2011	Deadline for the Postal Service to file any responsive pleading.
October 17, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 21, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 10, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 25, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 2, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 9, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24709 Filed 9–26–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65370; File No. SR–OCC–2011–08]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Provide Specific Authority To Use an Auction Process as One of the Means To Liquidate a Defaulting Clearing Member's Accounts

September 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on July 14, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on August 3, 2011.[3] On September 15, 2011, OCC filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change as amended by Amendment No. 1 is described in Items I, II, and III below, which have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to provide OCC specific authority to use an auction process as one of the means to liquidate a defaulting clearing member's accounts[5].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to revise OCC's rules to provide specific authority for OCC to use an auction process as one of the possible means by which OCC may liquidate a defaulting clearing member's accounts. An auction is likely to be the most efficient and orderly procedure practicable for closing out clearing member portfolios in some circumstances.

The liquidation of open long and short positions through exchange transactions is an obvious means of closing out the positions of a defaulting member. However, auctions are increasingly viewed as an efficient and cost effective alternative for liquidating some or all of a clearing member's positions and collateral, especially where the positions are very large or in unstable market conditions. As compared to liquidating positions through exchange transactions, an auction may usually be expected to result in a shorter liquidation period and reduced execution risk. During Lehman Brothers Holdings Inc.'s liquidation, clearinghouses such as LCH.Clearnet and CME Clearing liquidated certain derivatives positions through auctions.

Chapter XI of OCC's Rules, which governs the liquidation of a clearing member's accounts in the event of an insolvency, provides that margins deposited with the Corporation, contributions to the Clearing Fund and open positions of a suspended clearing member must be closed by OCC ''in the most orderly manner practicable.'' While OCC and its counsel believe that this language is broad enough to authorize a private auction, *i.e.,* an auction limited to selected bidders, as a means of closing out open positions, OCC also believes that explicit authorization for a private auction procedure could reduce the likelihood of a legal challenge should such a procedure be utilized.

The proposed change to OCC's rules is consistent with Section 17A of the Act, as amended (the ''Exchange Act''), because it is designed to promote the prompt and accurate clearance and settlement of security transactions, and generally protect investors and the public interest, by making more explicit OCC's ability to use an auction procedure to liquidate a defaulting clearing member's accounts. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 64982 (July 28, 2011), 76 FR 46867 (August 3, 2011).

[4] The proposed rule change as originally filed would revise OCC Rule 1104 (margins deposited and contributions to the Clearing Fund) to clarify that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member's accounts. Amendment No. 1 to the proposed rule change would also revise OCC Rule 1106 (open positions of a suspended clearing member) in a similar manner. Accordingly, as amended, the proposed rule change would clarify that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member's accounts under both OCC Rule 1104 and OCC Rule 1106. Telephone conference between Stephen Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets, on September 20, 2011.

[5] The proposed rule change amends OCC Rules 1104 and 1106, which allow for liquidation upon the suspension of a clearing member. OCC Rule 1102 permits the Board of Directors or Chairman of OCC to suspend clearing members under a number of circumstances, including clearing member default. Telephone conference between Stephen Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets, on September 20, 2011.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed rule change is consistent with the Act and with respect to the following:

• The Commission requests comment regarding the types of circumstances in which an auction would or would not be the most orderly procedure practicable for closing out clearing member portfolios. For example, in what circumstances would a private auction be a more or less orderly procedure than liquidating the defaulting member's positions on a national securities exchange?

• The Commission requests comment on whether a private auction limited to selected bidders could impose any burden on competition. In what ways, if any, would the effects on competition vary based the types of firms that are allowed to participate in an auction and the method used to select such participants?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2011–08 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2011–08. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 pm. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_08_a_1.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2011–08 and should be submitted on or before October 12, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary .

[FR Doc. 2011–24673 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65535; File No. SR–FINRA–2011–045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Series 7 Examination Program

September 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is filing revisions to the content outline and selection specifications for the General Securities Representative (Series 7) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a General Securities Representative and the relationships

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] FINRA also is proposing corresponding revisions to the Series 7 question bank, but based upon instruction from the Commission staff, FINRA is submitting SR–FINRA–2011–045 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

between the different components of the outline. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of FINRA.

The revised content outline is attached.[6] The Series 7 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to SEA Rule 24b–2.[7]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Section 15A(g)(3) of the Act[8] authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA Rules. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rules and the rules incorporated from NYSE[9] require that a ''representative,'' as defined in the respective rules,[10] register and qualify as a General Securities Representative,[11] subject to certain exceptions.[12] The Series 7 examination is the FINRA examination that qualifies an individual to function as a General Securities Representative.

A committee of industry representatives, together with FINRA staff, recently undertook a review of the Series 7 examination program. As a result of this review, FINRA is proposing to make revisions to the content outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a General Securities Representative and the relationship between the different components of the content outline.

Current Outline

The current content outline is divided into seven critical functions performed by a General Securities Representative. The following are the number of questions associated with each of the seven functions, denoted 1 through 7:

1: 9 questions.
2: 4 questions.
3: 123 questions.
4: 27 questions.
5: 53 questions.
6: 13 questions.
7: 21 questions.

Each function also includes the tasks associated with performing that function. Further, the outline includes a section listing the applicable laws, rules and regulations with cross-references to the related functions and associated tasks.

Proposed Revisions

FINRA is proposing to divide the content outline into five major job functions performed by a General Securities Representative. The following are the five major job functions, denoted F1 through F5, and the number of questions associated with each of the five functions:

F1: Seeks Business for the Broker-Dealer through Customers and Potential Customers, 68 questions;

F2: Evaluates Customers' Other Security Holdings, Financial Situation and Needs, Financial Status, Tax Status, and Investment Objectives, 27 questions;

F3: Opens Accounts, Transfers Assets, and Maintains Appropriate Account Records, 27 questions;

F4: Provides Customers with Information on Investments and Makes Suitable Recommendations, 70 questions; and

F5: Obtains and Verifies Customer's Purchase and Sales Instructions, Enters Orders, and Follows Up, 58 questions.

Additionally, each job function includes certain tasks describing activities associated with performing that function. FINRA is proposing to revise the outline to better reflect the functions and associated tasks performed by a General Securities Representative.

The revised content outline also includes a knowledge section describing the underlying knowledge required to perform the major job functions and associated tasks and a rule section listing the laws, rules and regulations related to the job functions, associated tasks and knowledge statements. There are cross-references within each section to the other applicable sections.

As noted above, FINRA also is proposing to revise the content outline to reflect changes to the laws, rules and regulations covered by the examination. Among other revisions, FINRA is

[6] The Commission notes that the revised content outline is attached to the filing rather than to this notice.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[10] *See* NASD Rule 1031(b) and NYSE Rule 10.

[11] *See* NASD Rules 1031(a) and 1032(a); NYSE Rules 345.10 and 345.15(2); and NYSE Rule Interpretation 345.15/02.

[12] If a representative does not engage in municipal securities activities, NASD and NYSE Rules permit the representative to register and qualify as a United Kingdom Securities Representative (Series 17) or Canada Securities Representative (Series 37/38). *See* NASD Rule 1032(a); and NYSE *Information Memoranda* Nos. 91–09 (March 21, 1991) and 96–06 (March 8, 1996). FINRA is filing proposed revisions to the Series 17 and Series 37/38 examination programs in conjunction with this filing. *See* SR–FINRA–2011–046; SR–FINRA–2011–047 and SR–FINRA–2011–048. NASD and NYSE Rules also provide that a representative is not required to register as a General Securities Representative if the person's activities are so limited as to qualify such person as an Investment Company and Variable Contracts Products Representative (Series 6) or a Direct Participation Programs Representative (Series 22). *See* NASD Rules 1032(a)(1), (b) and (c); NYSE Rule 345.15(3); and NYSE Rule Interpretation 345.15/02. Additionally, NASD Rules provide that a representative is not required to register as a General Securities Representative if the person's activities are so limited as to qualify such person as an Order Processing Assistant Representative (Series 11), Options Representative (Series 42), a Corporate Securities Representative (Series 62), Government Securities Representative (Series 72) or Private Securities Offerings Representative (Series 82). *See* NASD Rules 1032(a)(1), (d), (e), (g) and (h); and NASD Rules 1041 and 1042. Finally, certain representatives are subject to an additional registration and qualification requirement, Equity Traders (Series 55), or are subject to a separate registration and qualification requirement, Investment Banking Representatives (Series 79). *See* NASD Rules 1032(f) and (i).

proposing to revise the content outline to reflect the adoption of rules in the consolidated FINRA rulebook (*e.g.,* FINRA Rule 3240 (Borrowing From or Lending to Customers)).

FINRA is proposing similar changes to the Series 7 selection specifications and question bank. The number of questions on the Series 7 examination will remain at 250 multiple-choice questions,[13] and candidates will continue to have six hours to complete the examination.

Currently, a ''scaled score'' of 70 percent is required to pass the examination.[14] A scaled score of 72 percent will be required to pass the revised examination.

Municipal Securities Activities

Currently, pursuant to MSRB Rule G–3, either the Municipal Securities Representative (Series 52) examination or the Series 7 examination qualifies an individual to function as a Municipal Securities Representative. FINRA is proposing to revise the Series 7 examination to reduce the emphasis on municipal securities activities. FINRA understands that the MSRB will file with the Commission a proposed rule change to amend MSRB Rule G–3 to provide that an individual qualifying as a Municipal Securities Representative by passing the Series 7 may only engage in municipal securities sales to, and purchases from, customers.

Availability of Content Outlines

The current Series 7 content outline is available on FINRA's Web site, at *http://www.finra.org/brokerqualifications/exams.* The revised Series 7 content outline will replace the current content outline on FINRA's Web site.

FINRA is filing the proposed rule change for immediate effectiveness. FINRA proposes to implement the revised Series 7 examination program on November 7, 2011. FINRA will announce the proposed rule change and the implementation date in a *Regulatory Notice.*

[13] Consistent with FINRA's practice of including ''pre-test'' questions on certain qualification examinations, which is to ensure that new examination questions meet acceptable testing standards prior to use for scoring purposes, each examination includes 10 additional, unidentified pre-test questions that do not contribute towards the candidate's score. Therefore, the examination actually consists of 260 questions, 250 of which are scored. The 10 pre-test questions are randomly distributed throughout the examination.

[14] The examination questions are randomly selected from the question bank, which may result in slight variations in the difficulty of the examinations. The use of a scaled score is intended to place the examinations on equal ground.

2. Statutory Basis

FINRA believes that the proposed revisions to the Series 7 examination program are consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[16] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed revisions will further these purposes by updating the examination program to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a General Securities Representative.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f)(1) of Rule 19b–4 thereunder.[18] FINRA proposes to implement the revised Series 7 examination program on November 7, 2011. FINRA will announce the implementation date in a *Regulatory Notice.*

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(g)(3).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(1).

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–FINRA–2011–045 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.

All submissions should refer to File Number SR–FINRA–2011–045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–045 and should be submitted on or before October 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24710 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65371; File No. SR–C2–2011–021]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Exchange's Automated Improvement Mechanism

September 21, 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 September 16, 2011, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend C2 Rule 6.51, *Automated Improvement Mechanism (''AIM'').* The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/RuleFilings.aspx*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 Rule 6.51 governs the operation of an Exchange feature that allows agency orders to electronically execute against principal or solicited interest pursuant to a crossing entitlement after being exposed in an auction (referred to as ''AIM''). The purpose of this proposed rule change is to incorporate a provision into the rule that would provide the Exchange with the ability to determine to apply a price-time priority allocation algorithm for the SPXPM option class,[5] subject to certain conditions.

Currently, Rule 6.51(b)(3) specifies that agency orders may be allocated via AIM at the best price(s) pursuant to the allocation algorithm in effect for the class, subject to various conditions set forth in subparagraphs (b)(3)(A) through (I), including a requirement that public customer orders in the book shall have priority over the crossing entitlement. As proposed, the rule change would provide the Exchange with the flexibility to permit the allocation algorithm in effect for AIM in the SPXPM option class to be the price-time priority allocation algorithm (as provided in Rule 6.12, *Order Execution and Priority*) even if the allocation algorithm in effect for intra-day trading in the class is some other allocation algorithm.[6] If a determination is made to use price-time priority for AIM in the SPXPM option class, allocations would still be subject to the various conditions set forth in subparagraphs (b)(3)(A) through (I) of Rule 6.51, including the requirements that public customer orders in the book have priority over the crossing entitlement and that the crossing entitlement generally be limited to 40% (as specified in more detail in Rule 6.51). All pronouncements regarding allocation algorithm determinations by the Exchange for AIM in SPXPM will be announced to C2 Trading Permit Holders via Regulatory Circular.

As noted above, the price-time priority allocation algorithm that would be applied to AIM for the SPXPM option class is one of the algorithms specified in Rule 6.12. Thus, the Exchange is not creating any new algorithm for the AIM mechanism with respect to SPXPM, but is amending Rule 6.51 to provide the flexibility to choose the price-time priority allocation algorithm for AIM in the SPXPM option class rather than simply defaulting to the algorithm that will be in effect for intra-day trading in the SPXPM options class (*e.g.,* the algorithm for intra-day trading in SPXPM may be established as pro-rata priority (without public customer priority)), while the algorithm for AIM may be established as price-time priority (subject to certain conditions set out in the AIM rule, including the requirement that public customers have priority over the crossing entitlement). All other aspects of AIM, pursuant to Rule 6.51, shall apply unchanged.[7]

Having this additional flexibility will allow the Exchange to select the price-time priority allocation algorithm for AIM in the SPXPM option class (which algorithm is included among the existing algorithms set forth in Rule 6.12) even when a different allocation algorithm may be in effect for intra-day trading in the SPXPM option class. The Exchange notes that public customer orders are not impacted by this proposed rule change because, as discussed above, public customer priority is one of the conditions of the AIM auction that does not change regardless of on the base allocation algorithm that is applicable for the class. Thus, regardless of the base allocation algorithm in effect for intra-day trading and AIM in the class (*e.g.,* price-time priority or pro-rata priority), public customer orders in the book have priority to execute before any crossing entitlement is applied or any remaining balance after the application of the entitlement is allocated pursuant to the base algorithm.[8] For example:

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] SPXPM is the ticker symbol for the P.M.-settled S&P 500 Index options to be listed and traded on C2. *See* Securities Exchange Act Release No. 65256 (September 2, 2011) (SR–C2–2011–008).

[6] The allocation algorithms include price-time priority, pro-rata priority, and price-time with primary public customer and secondary trade participation right priority. Each of these base allocation methodologies can be supplemented with an optional market turner priority overlay. *See* Rule 6.12(a) through (b).

[7] In connection with this change, the Exchange is also proposing a non-substantive amendment to Rule 6.51. Specifically, the Exchange is proposing to replace the term ''matching algorithm'' with ''allocation algorithm'' so there is consistency in the use of terms within the rules. *See* proposed changes to Rule 6.51(b)(3).

[8] To the extent that public customers may strategically rest orders based on the allocation algorithm employed for intra-day and auction trading on a given exchange, public customers can (and already would today under the existing rules)

• Under the current rules, the Exchange may determine to apply a pro-rata allocation algorithm (without public customer priority) for intra-day trading in SPXPM, in which case the AIM allocation algorithm for SPXPM would be public customer priority, then the crossing entitlement, then any remaining balance allocated based on pro-rata priority.

• Under the proposed rule change, the Exchange may determine to apply a pro-rata allocation algorithm (without public customer priority) for intra-day trading in SPXPM and a price-time allocation for AIM in SPXPM, in which case the AIM allocation algorithm would be public customer priority, then the crossing entitlement, then any remaining balance allocated based on pro-rata priority.

Public customer orders have the same experience under both allocation scenarios noted above. To further illustrate this point, consider the following examples:

• Under the current rules, the intra-day allocation algorithm in effect for SPXPM is pro-rata. If there are three public customer orders to sell resting in the book (each for 10 contracts at $1.20) and an agency order for 100 contracts is presented for crossing via AIM and the execution price at the conclusion of the auction is $1.20 (assume there are no responses and no other interest represented on the book at $1.20), the priority would be 10 contracts to each resting public customer order, then the remaining balance of 70 contracts is allocated to the crossing contra-order.

• Under the proposed rule change, if the intra-day allocation algorithm in effect for SPXPM is pro-rata and for AIM in SPXPM is price-time, the outcomes would be exactly the same. Specifically, if there are three public customer orders to sell resting in the book (each for 10 contracts at $1.20) and an agency order for 100 contracts is presented for crossing via AIM and the execution price at the conclusion of the auction is $1.20 (assume there are no responses and no other interest represented on the book at $1.20), the priority would be 10 contracts to each resting public customer order, then the remaining balance of 70 contracts is allocated to the crossing contra-order.

The Exchange also believes that having the ability to select price-time priority as an alternate algorithm for SPXPM will provide us with additional flexibility to incent market participants to respond to AIM auctions. The Exchange believes that the proposed rule change would encourage quote competition because it is designed to reward aggressive pricing by offering incentives for Market-Makers and other market participants to support and participate in AIM and for market participants to establish the best price. When a price-time base algorithm is utilized for AIM, all market participants (including public customers) are incented to compete by establishing the best price.

The Exchange also notes that the outcomes that would result from the selection of the price-time priority algorithm for AIM are not novel or unique. Each outcome is an allocation that is currently permitted under C2's existing allocation rule, Rule 6.12. (Under the current rules, the Exchange could select price-time for the intra-day algorithm in SPXPM and, thus, the allocation algorithm for AIM would be public customer priority, then the crossing entitlement, then the remainder allocated based on price-time priority.) The Exchange further notes the fact that an order may be subject to one allocation under the intraday automatic execution procedures and another allocation under AIM is not novel or unique. The allocation algorithms for various mechanisms and trading scenarios on C2 (and on other exchanges) already have allocation algorithms ''hardcoded'' into the rules that differ from the intra-day allocation algorithms.[9] In each instance, a resting order is subject to varying allocations depending on several factors. In fact, as discussed and illustrated above, AIM currently has an allocation algorithm hardcoded into the C2 rules that differs from the intra-day allocation algorithm. As illustrated above, it is already possible today for a simple resting public customer order to receive a pro-rata share if executed intra-day, and a public customer priority share if executed via AIM.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] and the rules thereunder, and in particular with: Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[11] and Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or in furtherance of the Act.[12] The Exchange believes the proposed rule change is consistent with the Act in so much as use of a price-time priority allocation algorithm for AIM in SPXPM is consistent with, and already permitted under, C2 rules. The Exchange further notes that the proposed rule change ensures that incoming electronic orders processed through AIM are allocated in an equitable and fair manner and that market participants (including public customers) have a fair and reasonable opportunity for allocations based on established criteria and procedures. In this regard, the Exchange notes that public customer orders are *not* impacted by this proposed rule change because, as discussed above, public customer priority is one of the conditions of the AIM auction that does not change regardless of on the base allocation algorithm that is applicable for the class. The Exchange also believes that the change will allow the Exchange another method to reward aggressive pricing in AIM for the SPXPM options class. The Exchange believes that use of a price-time priority allocation algorithm in AIM (which is already an approved allocation algorithm utilized by the Exchange) would encourage quote competition because is designed to reward aggressive pricing by offering incentives both for Market-Makers and other market participants to support and participate in the C2 marketplace and for market participants to establish the best price. When a price-time algorithm is utilized in AIM, market participants (including public customers) are incented to compete by establishing the best price.

adjust their ''quoting'' behavior accordingly, similar to how they and other market participants already would do today. Several market characteristics factor into a market participant's quoting behavior including, but certainly not limited to, the applicable fee structure, average incoming order size, and the average touch rate (*i.e.,* average allocation a market participant actually receives on incoming electronic orders). The allocation for any market participant (including public customers) changes constantly from order-to-order, second-to-second for various reasons. The ultimate allocation depends upon, among other things, the size of an incoming order and whatever trading interest happens to be represented at the time the order is received. The Exchange believes (and as is further illustrated above) that the instant proposed rule change presents nothing novel or unique in this respect.

[9] *See, e.g.,* C2 Rules 6.51 and 6.52 and Chicago Board Options Exchange, Incorporated Rules 6.74A and 6.74B.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–021 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–C2–2011–021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of C2. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–C2–2011–021 and should be submitted on or before October 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24674 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65368; File No. SR–NYSE–2011–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Sections 102.01 and 103.01 of the Exchange's Listed Company Manual To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company

September 21, 2011.

On July 22, 2011, New York Stock Exchange LLC (''NYSE'' or the ''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 adopt additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company. The proposed rule change was published for comment in the **Federal Register** on August 10, 2011.[3] The Commission received one comment letter on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is September 24, 2011.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, which would establish additional listing requirements for companies applying to list after consummation of a ''reverse merger''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513.

[4] *See* Letter from James Davidson, Hermes Equity Ownership Services Limited to Elizabeth Murphy, Secretary, Commission dated August 31, 2011.

[5] 15 U.S.C. 78s(b)(2).

with a shell company, and to consider the comment letter that has been submitted in connection with the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates November 8, 2011 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–NYSE–2011–38).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24723 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65375; File No. SR–FINRA–2011–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Series 38 Examination Program

September 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is filing revisions to the content outline and selection specifications for the Canada Securities Representative (Series 38) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a Canada Securities Representative and the relationships between the different components of the outline. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of FINRA.

The revised content outline is attached.[6] The Series 38 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to SEA Rule 24b–2.[7]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Section 15A(g)(3) of the Act[8] authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA Rules. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rules and the rules incorporated from NYSE[9] require that a ''representative,'' as defined in the respective rules,[10] register and qualify as a General Securities Representative,[11] subject to certain exceptions. For those representatives who are not engaged in municipal securities activities, the NASD and NYSE Rules provide that registration and qualification as a Canada Securities Representative is equivalent to registration and qualification as a General Securities Representative.[12]

The Series 38 examination is a FINRA examination that qualifies an individual to function as a Canada Securities Representative.[13]

[5] FINRA also is proposing corresponding revisions to the Series 38 question bank, but based upon instruction from the Commission staff, FINRA is submitting SR–FINRA–2011–048 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] The Commission notes that the content outline is attached to the filing, not to this Notice.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[10] *See* NASD Rule 1031(b) and NYSE Rule 10.

[11] *See* NASD Rules 1031(a) and 1032(a); NYSE Rules 345.10 and 345.15(2); and NYSE Rule Interpretation 345.15/02.

[12] *See* NASD Rule 1032(a)(2)(C) and NYSE *Information Memorandum* 96–06 (March 1996). FINRA is filing proposed revisions to the Series 7 examination program in conjunction with this filing. *See* SR–FINRA–2011–045.

[13] Both the Series 37 examination and the Series 38 examination are FINRA examinations that qualify an individual to function as a Canada Securities Representative. In either case, candidates must also satisfy certain prerequisite training and competence requirements of the Canadian regulators and be registered and in good standing with the appropriate Canadian regulator. However, candidates for the Series 38 examination are subject to the following additional Canadian prerequisite. They must complete either: (1) The Options Licensing Course and the Derivatives Fundamental Course; or (2) the Canadian Options Course. More information regarding the prerequisite requirements is available on FINRA's Web site at: *http://*

Continued

A committee of industry representatives, together with FINRA staff, recently undertook a review of the Series 38 examination program. As a result of this review, FINRA is proposing to make revisions to the content outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a Canada Securities Representative and the relationship between the different components of the content outline.

Current Outline

The current Series 38 content outline is divided into six topics. The following are the number of questions associated with each of the six topics, denoted I through VI:

I: 16 questions.
II: 10 questions.
III: 4 questions.
IV: 5 questions.
V: 4 questions.
VI: 6 questions.

The topics include: Federal and State Laws and Industry Regulations; Investments; Margin; Retirement Plans; Variable Annuities; and Taxation.[14]

Proposed Revisions

FINRA is proposing to divide the Series 38 content outline into five major job functions performed by a Canada Securities Representative. The following are the five major job functions, denoted F1 through F5, and the number of questions associated with each of the five functions:

F1: Seeks Business for the Broker-Dealer through Customers and Potential Customers, 7 questions;

F2: Evaluates Customers' Other Security Holdings, Financial Situation and Needs, Financial Status, Tax Status, and Investment Objectives, 7 questions;

F3: Opens Accounts, Transfers Assets, and Maintains Appropriate Account Records, 12 questions;

F4: Provides Customers with Information on Investments and Makes Suitable Recommendations, 10 questions; and

F5: Obtains and Verifies Customer's Purchase and Sales Instructions, Enters Orders, and Follows Up, 9 questions.

Additionally, each job function includes certain tasks describing activities associated with performing that function. FINRA is proposing to revise the outline to better reflect the functions and associated tasks performed by a Canada Securities Representative.

The revised content outline also includes a knowledge section describing the underlying knowledge required to perform the major job functions and associated tasks and a rule section listing the laws, rules and regulations related to the job functions, associated tasks and knowledge statements. There are cross-references within each section to the other applicable sections.

As noted above, FINRA also is proposing to revise the content outline to reflect changes to the laws, rules and regulations covered by the examination. Among other revisions, FINRA is proposing to revise the content outline to reflect the adoption of rules in the consolidated FINRA rulebook (*e.g.,* FINRA Rule 3240 (Borrowing From or Lending to Customers)).

FINRA is proposing similar changes to the Series 38 selection specifications and question bank. The number of questions on the Series 38 examination will remain at 45 multiple-choice questions, and candidates will continue to have 75 minutes to complete the examination.

Currently, a score of 70 percent is required to pass the examination. A score of 72 percent will be required to pass the revised examination.

Availability of Content Outlines

The revised Series 38 content outline will be available on FINRA's Web site, at *http://www.finra.org/brokerqualifications/exams.*

FINRA is filing the proposed rule change for immediate effectiveness. FINRA proposes to implement the revised Series 38 examination program on November 7, 2011. FINRA will announce the proposed rule change and the implementation date in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed revisions to the Series 38 examination program are consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[16] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed revisions will further these purposes by updating the examination program to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a Canada Securities Representative.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f)(1) of Rule 19b–4 thereunder.[18] FINRA proposes to implement the revised Series 38 examination program on November 7, 2011. FINRA will announce the implementation date in a Regulatory Notice.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/P121265. FINRA is filing proposed revisions to the Series 37 examination program in conjunction with this filing. *See* SR–FINRA–2011–047.

[14] Unlike the Series 37 examination, the Series 38 examination does not include test questions that assess knowledge of options since individuals wishing to sit for the Series 38 examination are already subject to the Canadian options prerequisite noted above.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(g)(3).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(1).

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–FINRA–2011–048 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.

All submissions should refer to File Number SR–FINRA–2011–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–048 and should be submitted on or before October 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24733 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65376; File No. SR–FINRA–2011–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Series 17 Examination Program

September 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is filing revisions to the content outline and selection specifications for the United Kingdom Securities Representative (Series 17) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a United Kingdom Securities Representative and the relationships between the different components of the outline. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of FINRA.

The revised content outline is attached.[6] The Series 17 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to SEA Rule 24b–2.[7]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Section 15A(g)(3) of the Act[8] authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA Rules. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rules and the rules incorporated from NYSE[9] require that a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] FINRA also is proposing corresponding revisions to the Series 17 question bank, but based upon instruction from the Commission staff, FINRA is submitting SR–FINRA–2011–046 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] The Commission notes that the content outline is attached to the filing, not to this Notice.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply

Continued

''representative,'' as defined in the respective rules,[10] register and qualify as a General Securities Representative,[11] subject to certain exceptions. For those representatives who are not engaged in municipal securities activities, the NASD and NYSE Rules provide that registration and qualification as a United Kingdom Securities Representative is equivalent to registration and qualification as a General Securities Representative.[12]

The Series 17 examination is the FINRA examination that qualifies an individual to function as a United Kingdom Securities Representative.[13]

A committee of industry representatives, together with FINRA staff, recently undertook a review of the Series 17 examination program. As a result of this review, FINRA is proposing to make revisions to the content outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a United Kingdom Securities Representative and the relationship between the different components of the content outline.

Current Outline

The current Series 17 content outline is divided into five critical functions performed by a United Kingdom Securities Representative. The following are the number of questions associated with each of the five functions, denoted 1 through 5:

1: 8 questions.
2: 28 questions.
3: 24 questions.
4: 33 questions.
5: 7 questions.

Each function also includes the tasks associated with performing that function. Further, the outline includes a section listing the applicable laws, rules and regulations with cross-references to the related functions and associated tasks.

Proposed Revisions

FINRA is proposing to divide the Series 17 content outline into five major job functions performed by a United Kingdom Securities Representative. The following are the five major job functions, denoted F1 through F5, and the number of questions associated with each of the five functions:

F1: Seeks Business for the Broker-Dealer through Customers and Potential Customers, 20 questions;

F2: Evaluates Customers' Other Security Holdings, Financial Situation and Needs, Financial Status, Tax Status, and Investment Objectives, 15 questions;

F3: Opens Accounts, Transfers Assets, and Maintains Appropriate Account Records, 25 questions;

F4: Provides Customers with Information on Investments and Makes Suitable Recommendations, 20 questions; and

F5: Obtains and Verifies Customer's Purchase and Sales Instructions, Enters Orders, and Follows Up, 20 questions.

Additionally, each job function includes certain tasks describing activities associated with performing that function. FINRA is proposing to revise the outline to better reflect the functions and associated tasks performed by a United Kingdom Securities Representative.

The revised content outline also includes a knowledge section describing the underlying knowledge required to perform the major job functions and associated tasks and a rule section listing the laws, rules and regulations related to the job functions, associated tasks and knowledge statements. There are cross-references within each section to the other applicable sections.

As noted above, FINRA also is proposing to revise the content outline to reflect changes to the laws, rules and regulations covered by the examination. Among other revisions, FINRA is proposing to revise the content outline to reflect the adoption of rules in the consolidated FINRA rulebook (*e.g.,* FINRA Rule 3240 (Borrowing From or Lending to Customers)).

FINRA is proposing similar changes to the Series 17 selection specifications and question bank. The number of questions on the Series 17 examination will remain at 100 multiple-choice questions. However, candidates will have 150 minutes (2½ hours) to complete the examination, whereas today they have two hours to complete the examination.

Currently, a score of 70 percent is required to pass the examination. A score of 72 percent will be required to pass the revised examination.

Availability of Content Outlines

The revised Series 17 content outline will be available on FINRA's Web site, at *http://www.finra.org/brokerqualifications/exams.*

FINRA is filing the proposed rule change for immediate effectiveness. FINRA proposes to implement the revised Series 17 examination program on November 7, 2011. FINRA will announce the proposed rule change and the implementation date in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed revisions to the Series 17 examination program are consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[15] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed revisions will further these purposes by updating the examination program to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a United Kingdom Securities Representative.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition 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

Written comments were neither solicited nor received.

to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[10] *See* NASD Rule 1031(b) and NYSE Rule 10.

[11] *See* NASD Rules 1031(a) and 1032(a); NYSE Rules 345.10 and 345.15(2); and NYSE Rule Interpretation 345.15/02.

[12] *See* NASD Rule 1032(a)(2)(B) and NYSE *Information Memorandum* 91–09 (March 1991). FINRA is filing proposed revisions to the Series 7 examination program in conjunction with this filing. *See* SR–FINRA–2011–045.

[13] Candidates must also satisfy certain prerequisite training and competence requirements of the United Kingdom's Financial Services Authority (''FSA'') and be registered and in good standing with the FSA. More information regarding the prerequisite requirements is available on FINRA's Web site at: *http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/P121264.*

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78*o*–3(g)(3).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f)(1) of Rule 19b–4 thereunder.[17] FINRA proposes to implement the revised Series 17 examination program on November 7, 2011. FINRA will announce the implementation date in a *Regulatory Notice.*

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–FINRA–2011–046 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.

All submissions should refer to File Number SR–FINRA–2011–046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–046 and should be submitted on or before October 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24734 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(1).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65374; File No. SR–FINRA–2011–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Series 37 Examination Program

September 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is filing revisions to the content outline and selection specifications for the Canada Securities Representative (Series 37) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a Canada Securities Representative and the relationships between the different components of the outline. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of FINRA.

The revised content outline is attached.[6] The Series 37 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to SEA Rule 24b–2.[7]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] FINRA also is proposing corresponding revisions to the Series 37 question bank, but based upon instruction from the Commission staff, FINRA is submitting SR–FINRA–2011–047 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] The Commission notes that the content outline is attached to the filing, not to this Notice.

[7] 17 CFR 240.24b–2.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Section 15A(g)(3) of the Act[8] authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA Rules. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rules and the rules incorporated from NYSE[9] require that a ''representative,'' as defined in the respective rules,[10] register and qualify as a General Securities Representative,[11] subject to certain exceptions. For those representatives who are not engaged in municipal securities activities, the NASD and NYSE Rules provide that registration and qualification as a Canada Securities Representative is equivalent to registration and qualification as a General Securities Representative.[12]

The Series 37 examination is a FINRA examination that qualifies an individual to function as a Canada Securities Representative.[13]

A committee of industry representatives, together with FINRA staff, recently undertook a review of the Series 37 examination program. As a result of this review, FINRA is proposing to make revisions to the content outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a Canada Securities Representative and the relationship between the different components of the content outline.

Current Outline

The current Series 37 content outline is divided into seven topics. The following are the number of questions associated with each of the seven topics, denoted I through VII:

I: 16 questions.
II: 10 questions.
III: 4 questions.
IV: 5 questions.
V: 4 questions.
VI: 6 questions.
VII: 45 questions.

The topics include: Federal and State Laws and Industry Regulations; Investments; Margin; Retirement Plans; Variable Annuities; Taxation; and Options.[14]

Proposed Revisions

FINRA is proposing to divide the Series 37 content outline into five major job functions performed by a Canada Securities Representative. The following are the five major job functions, denoted F1 through F5, and the number of questions associated with each of the five functions:

F1: Seeks Business for the Broker-Dealer through Customers and Potential Customers, 22 questions;

F2: Evaluates Customers' Other Security Holdings, Financial Situation and Needs, Financial Status, Tax Status, and Investment Objectives, 12 questions;

F3: Opens Accounts, Transfers Assets, and Maintains Appropriate Account Records, 18 questions;

F4: Provides Customers with Information on Investments and Makes Suitable Recommendations, 16 questions; and

F5: Obtains and Verifies Customer's Purchase and Sales Instructions, Enters Orders, and Follows Up, 22 questions.

Additionally, each job function includes certain tasks describing activities associated with performing that function. FINRA is proposing to revise the outline to better reflect the functions and associated tasks performed by a Canada Securities Representative.

The revised content outline also includes a knowledge section describing the underlying knowledge required to perform the major job functions and associated tasks and a rule section listing the laws, rules and regulations related to the job functions, associated tasks and knowledge statements. There are cross-references within each section to the other applicable sections.

As noted above, FINRA also is proposing to revise the content outline to reflect changes to the laws, rules and regulations covered by the examination. Among other revisions, FINRA is proposing to revise the content outline to reflect the adoption of rules in the consolidated FINRA rulebook (*e.g.,* FINRA Rule 3240 (Borrowing From or Lending to Customers)).

FINRA is proposing similar changes to the Series 37 selection specifications and question bank. The number of questions on the Series 37 examination will remain at 90 multiple-choice questions, and candidates will continue to have 150 minutes (2½ hours) to complete the examination.

Currently, a score of 70 percent is required to pass the examination. A score of 72 percent will be required to pass the revised examination.

Availability of Content Outlines

The revised Series 37 content outline will be available on FINRA's Web site, at *http://www.finra.org/brokerqualifications/exams.*

FINRA is filing the proposed rule change for immediate effectiveness. FINRA proposes to implement the revised Series 37 examination program on November 7, 2011. FINRA will announce the proposed rule change and the implementation date in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed revisions to the Series 37 examination program are consistent with the

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[10] *See* NASD Rule 1031(b) and NYSE Rule 10.

[11] *See* NASD Rules 1031(a) and 1032(a); NYSE Rules 345.10 and 345.15(2); and NYSE Rule Interpretation 345.15/02.

[12] *See* NASD Rule 1032(a)(2)(C) and NYSE *Information Memorandum* 96–06 (March 1996). FINRA is filing proposed revisions to the Series 7 examination program in conjunction with this filing. *See* SR–FINRA–2011–045.

[13] Both the Series 37 examination and the Series 38 examination are FINRA examinations that qualify an individual to function as a Canada Securities Representative. In either case, candidates must also satisfy certain prerequisite training and competence requirements of the Canadian regulators and be registered and in good standing with the appropriate Canadian regulator. However, candidates for the Series 38 examination are subject to the following additional Canadian prerequisite. They must complete either: (1) The Options Licensing Course and the Derivatives Fundamental Course; or (2) the Canadian Options Course. More information regarding the prerequisite requirements is available on FINRA's Web site at: *http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/P121265.* FINRA is filing proposed revisions to the Series 38 examination program in conjunction with this filing. *See* SR–FINRA–2011–048.

[14] Unlike the Series 38 examination, the Series 37 examination includes test questions that assess knowledge of options since individuals wishing to sit for the Series 37 examination are not subject to the Canadian options prerequisite noted above.

provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[16] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed revisions will further these purposes by updating the examination program to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the functions and associated tasks performed by a Canada Securities Representative.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f)(1) of Rule 19b–4 thereunder.[18] FINRA proposes to implement the revised Series 37 examination program on November 7, 2011. FINRA will announce the implementation date in a *Regulatory Notice.*

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(g)(3).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(1).

V. 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–FINRA–2011–047 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.

All submissions should refer to File Number SR–FINRA–2011–047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–047 and should be submitted on or before October 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24732 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65369; File No. SR–NYSEAmex–2011–55]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Section 101 of the NYSE Amex Company Guide To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company

September 21, 2011.

On July 22, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''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 adopt additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company. The proposed rule change was published for comment in the **Federal Register** on August 10, 2011.[3] The Commission received two comment letters on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522.

[4] *See* Letter from David Feldman, Partner, Richardson Patel LLP dated August 29, 2011 and letter from Richard Rappaport, Chief Executive Officer, WestPark Capital, Inc. to John Carey, Chief Counsel, NYSE Regulation Inc. and NYSE Amex LLC dated August 31, 2011.

[5] 15 U.S.C. 78s(b)(2).

disapproved. The 45th day for this filing is September 24, 2011.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, which would establish additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company, and to consider the comment letters that have been submitted in connection with the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates November 8, 2011 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–NYSEAmex–2011–55).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24726 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65373; File No. SR–Phlx–2011–127]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Maximum Number of Quoters (''MNQ'') Permitted To Be Assigned in Equity Options

September 21, 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 September 15, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, which governs the assignment of options to Streaming Quote Traders (''SQTs'')[3] and Remote Streaming Quote Traders (''RSQTs''),[4] by establishing a higher maximum number of quoting participants (''Maximum Number of Quoters'' or ''MNQ'') that will apply to all equity options listed for trading on the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide additional liquidity in equity options on the Exchange by increasing the MNQ in all equity options.[5] Currently, the Exchange limits the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Commentary .02 to Rule 507 currently sets forth tiered MNQ levels permitting assignment of trading privileges to 24 market participants for the top 5% most actively traded options; 19 market participants for next 10% most actively traded options, and 17 market participants for all other options.[6] The ranking is currently based upon the preceding month's national volumes. Because the MNQ will now be the same for all equity options traded on the Exchange, there is no longer a need to calculate and establish multiple MNQ levels based upon monthly national volume. Accordingly, the Exchange proposes to delete current Commentary .03 to Rule 507, which states that, within the first five days of each month, a new MNQ will be set based on the previous month's trading volume (''new MNQ''), and which sets forth rules that apply to those options for which the new MNQ decreases the previous MNQ.[7]

The Exchange proposes to increase the MNQ level to 30 for all equity options listed for trading on the Exchange. After careful analysis, the Exchange believes it has sufficient capacity to increase the MNQ as proposed. The Exchange believes that the effect of an increase in the MNQ fosters competition in that it increases the number of SQTs and RSQTs that may quote electronically in a product. Pursuant to re-numbered Commentary .04 to Rule 507, the Exchange will

[3] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[4] An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[5] Commentary .05 to Rule 507 (which is proposed to be re-numbered as Commentary .04) states that the Exchange may increase the MNQ levels established in this Commentary by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act, and will continue to require any proposed decrease in MNQ to be filed with the Commission pursuant to Section 19(b)(2) of the Act.

[6] When initially adopted, Commentary .02(a)–(c) established MNQ levels of 20 market participants for the top 5% most actively traded options; 15 market participants for next 10% most actively traded options, and 10 market participants for all other options. *See* Securities Exchange Act Release No. 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007) (SR–Phlx-2006–81). These MNQ levels were subsequently increased to levels of 22, 17, and 12, respectively. *See* Securities Exchange Act Release No. 56261 (August 15, 2007), 72 FR 47112 (August 22, 2007)(SR–Phlx–2007–51). The MNQ levels were then increased to 22, 17 and 15 respectively. See Securities Exchange Act Release No. 58906 (November 6, 2008), 73 FR 67239 (November 13, 2008) (SR–Phlx–2008–76). The current MNQ levels of 24, 19 and 17, respectively, were established in September, 2009. *See* Securities Exchange Act Release No. 60688 (September 18, 2009), 74 FR 49058 (September 25, 2009) (SR–Phlx–2009–82).

[7] *See supra* note 5.

announce all changes regarding MNQ levels to the membership on the Exchange's Web site.

All new applicants for trading privileges will be subject to the process for assignment described in Rule 507. The Exchange considers all applicants for assignment in options using the objective criteria set forth in Exchange Rule 507(b). The objective criteria are used by the Exchange in determining the most beneficial assignment of options for the Exchange and the public.

The Exchange also proposes technical changes to Commentaries .04 and .05 to the rule, which are being re-numbered to account for the deletion of Commentary .03.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by adding depth and liquidity to the Exchange's markets in equity options.

The Exchange further believes that increasing the MNQ, and establishing an MNQ level that will apply to all equity options traded on the Exchange, is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–127. 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–Phlx–2011–127 and should be submitted on or before October 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24798 Filed 9–26–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12843 and #12844]

Virginia Disaster # VA–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia dated 09/21/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011.

Effective Date: 09/21/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be

filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: New Kent, Petersburg City.

Contiguous Counties:

Virginia: Charles City, Chesterfield, Colonial Heights City, Dinwiddie, Hanover, Henrico, James City, King And Queen, King William, Prince George.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128438 and for economic injury is 128440.

The Commonwealth which received an EIDL Declaration # is Virginia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 21, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–24801 Filed 9–26–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816]

Texas Disaster Number TX–00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 09/19/2011.

Physical Loan Application Deadline Date: 11/08/2011.

EIDL Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 09/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Cass, Marion.

Contiguous Counties: (Economic Injury Loans Only):

Texas: Bowie, Morris.

Arkansas: Miller.

Louisiana: Caddo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24711 Filed 9–26–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12824 and #12825]

New York Disaster Number NY–00110

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4031–DR), dated 09/13/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 and continuing.

Effective Date: 09/19/2011.

Physical Loan Application Deadline Date: 11/14/2011.

EIDL Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 09/13/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Chemung.

Contiguous Counties: (Economic Injury Loans Only):

New York: Schuyler, Steuben.

Pennsylvania: Tioga.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24713 Filed 9–26–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12841 and #12842]

Oklahoma Disaster #OK–00056

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 09/21/2011.

Incident: Oklahoma County Wildfire.

Incident Period: 08/30/2011 through 09/01/2011.

Effective Date: 09/21/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Oklahoma.
Contiguous Counties:
Oklahoma: Canadian, Cleveland, Kingfisher, Lincoln, Logan, Pottawatomie.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128415 and for economic injury is 128420.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 21, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–24800 Filed 9–26–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0308]

Plexus Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Plexus Fund II, L.P., 200 Providence Road, Suite 210, Charlotte, NC, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Plexus II, L.P., proposes to provide debt security financing to Project Empire, Inc., 420 3rd Ave., NW., Hickory, NC 28601. The financing is contemplated for growth and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because Plexus Fund II, L.P.'s financing will discharge an obligation of Web Products, LLC, owed to Plexus Fund I, L.P., which is considered an Associate of Plexus Fund II, L.P., as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 20, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–24799 Filed 9–26–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates; Notice

AGENCY: Small Business Administration.

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.125 (3⅛) percent for the October–December quarter of FY 2012.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (*see* 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Walter C. Intlekofer,

Acting Director, Office of Financial Assistance.

[FR Doc. 2011–24715 Filed 9–26–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7611]

Culturally Significant Objects Imported for Exhibition Determinations: ''Contested Visions in the Spanish Colonial World''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Contested Visions in the Spanish Colonial World'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about November 6, 2011, until on or about January 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 19, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–24809 Filed 9–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7612]

In the Matter of the Designation of Jurdan Martitegui Lizaso, Also Known as Jurdan Martitegui, Also Known as Arlas, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Jurdan Martitegui Lizaso, also known as Jurdan Martitegui, also known as Arlas, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 20, 2011.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2011–24796 Filed 9–26–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6808]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; advisory committee meeting cancellation.

SUMMARY: The Department of State gives notice of cancellation of the meeting of the Advisory Committee on International Postal and Delivery Services scheduled for September 29, 2011, and announced in the **Federal Register** on Friday, September 2, 2011. The meeting will be rescheduled for a date to be announced in the future.

FOR FURTHER INFORMATION CONTACT: Laree Martin, Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1526, *Martinl@state.gov.*

Dated: September 15, 2011.

Nerissa J. Cook,

Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2011–24803 Filed 9–26–11; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation (AST); Notice of Availability and Request for Comment on the Draft Environmental Assessment (EA) for Issuing an Experimental Permit to SpaceX for Operation of the Grasshopper Vehicle at the McGregor Test Site, Texas

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

ACTION: Notice of Availability, Notice of Public Comment Period, and Request for Comment.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, 42 United States Code 4321–4347 (as amended), Council on Environmental Quality (CEQ) NEPA implementing regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of and requesting comments on the Draft EA for Issuing an Experimental Permit to SpaceX for Operation of the Grasshopper Vehicle at the McGregor Test Site, Texas.

The Draft EA was prepared in response to an application for an experimental permit from Space Exploration Technologies Corporation (SpaceX). Under the Proposed Action, the FAA would issue an experimental permit to SpaceX to conduct suborbital launches and landings of the Grasshopper Reusable Launch Vehicle (RLV) from the McGregor test site in McGregor, TX. The Grasshopper RLV is a vertical takeoff and vertical landing vehicle. The McGregor test site is located within the city limits of the City of McGregor, TX in Coryell and McLennan Counties, approximately 20 miles southwest of Waco, TX. The Draft EA addresses the potential environmental impacts of implementing the Proposed Action and the No Action Alternative of not issuing an experimental permit to SpaceX.

The FAA has posted the Draft EA on the FAA/AST Web site at *http://www.faa.gov/about/office_org/headquarters_offices/ast/.* In addition, copies of the Draft EA were sent to persons and institutions on the distribution list (see Chapter 8 of the Draft EA). A paper copy of the Draft EA may be reviewed for comment during regular business hours at the following location:

McGinley Memorial Library, 317 Main Street, McGregor, TX 76657.

DATES: Interested parties are invited to submit comments on environmental issues and concerns on or before October 26, 2011, or 30 days from the date of publication of this Notice of Availability, whichever is later.

ADDRESSES: Please submit comments in writing to Mr. Daniel Czelusniak, Environmental Program Lead, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Room 325, Washington, DC 20591; or by e-mail at *Daniel.Czelusniak@faa.gov.*

Additional Information: Under the Proposed Action, the FAA would issue an experimental permit to SpaceX, which would authorize SpaceX to conduct suborbital launches and landings of the Grasshopper RLV from the McGregor test site in McGregor, TX. SpaceX has determined that to support the Grasshopper RLV activities under the experimental permit, it would be necessary to construct a launch pad and additional support infrastructure (water lines). Therefore, the Proposed Action analyzed in the Draft EA includes the activities that would be authorized by the experimental permit (i.e., the operation of the launch vehicle) as well as the construction of the launch pad and installation of water lines. The experimental permit would be valid for one year and would authorize an unlimited number of launches. The FAA could renew the experimental permit if requested, in writing, by SpaceX at least 60 days before the permit expires. SpaceX anticipates that the Grasshopper RLV program would require up to 3 years to complete. Therefore, the Proposed Action considers one new permit and two potential permit renewals.

Although an experimental permit would authorize an unlimited number of launches, the FAA, in conjunction with SpaceX, developed a conservative set of assumptions regarding the possible number of launches that could be conducted under any one experimental permit for the Grasshopper RLV at the McGregor test

site. The FAA has assumed that SpaceX would conduct up to 70 annual suborbital launches of the Grasshopper RLV under an experimental permit at the McGregor test site. This estimation is a conservative number and considers potential multiple launches per day and potential launch failures.

The only alternative to the Proposed Action analyzed in the Draft EA is the No Action Alternative. Under the No Action Alternative, the FAA would not issue an experimental permit to SpaceX for operation of the Grasshopper RLV at the McGregor test site. Existing SpaceX activities would continue at the McGregor test site. Please refer to Section 2.2 of the Draft EA for a brief discussion of existing SpaceX activities.

The resource areas considered in the Draft EA include air quality; noise and compatible land use; land use (including U.S. Department of Transportation Section 4(f) Properties); biological resources (fish, wildlife, and plants); historical, architectural, archaeological, and cultural resources; hazardous materials, pollution prevention, and solid waste; light emissions and visual resources; natural resources and energy supply; water resources (surface waters and wetlands, groundwater, floodplains, and water quality); socioeconomics, environmental justice, and children's environmental health and safety; and secondary (induced) impacts. Potential cumulative impacts of the Proposed Action were also addressed in the Draft EA.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Environmental Program Lead, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Room 325, Washington, DC 20591; telephone (202) 267–5924; *e-mail: Daniel.Czelusniak@faa.gov.*

Issued in Washington, DC, on September 20, 2011.

Glenn H. Rizner,

Deputy Manager, Space Transportation Development Division.

[FR Doc. 2011–24717 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Meeting of the Marine Transportation System National Advisory Council

AGENCY: Maritime Administration.

ACTION: Notice of Public Meeting.

SUMMARY: The Maritime Administration (MarAd) announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting on October 12–13, 2011 to assess its priorities for the coming year, and to discuss other issues of importance to the Marine Transportation System. During the two day meeting, a public comment period is scheduled for 1 p.m.–1:30 p.m. on Wednesday, October 12, 2011. Members of the public who would like to speak are asked to contact Richard J. Lolich by October 5, 2011. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. We hope to be able to accommodate everyone who would like to speak at the meeting, but if there are more interested participants than time available, we will limit participants in order of date and time of registration. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, time will be allotted to those attending the meeting to speak, even if they had not previously registered to speak. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed with Richard Lolich by October 14, 2011. [See also **FOR FURTHER INFORMATION CONTACT**]

DATES: The meeting will be held on Wednesday, October 12, 2011, from 9 a.m. to 5 p.m. and Thursday, October 13, 2011, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Media Center at the U.S. Department of Transportation Headquarters, 1200 New Jersey Ave., SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–310, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *richard.lolich@dot.gov.*

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

By Order of the Maritime Administrator.

Date: September 22, 2011.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–24773 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0157; Notice No. 11–6]

Clarification on the Division 1.1 Fireworks Approvals Policy

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Clarification.

SUMMARY: In this document, PHMSA is seeking comment on its intent to clarify its fireworks approvals policy whereby the Office of Hazardous Materials Safety (OHMS), Approvals and Permits Division will accept only those classification approval applications for Division 1.1 fireworks that have been examined and assigned a recommended shipping description, division and compatibility group by a DOT-approved explosives test laboratory, or that have been issued an approval for the explosive by the competent authority of a foreign government acknowledged by PHMSA's Associate Administrator. If the Associate Administrator finds the approval request meets the regulatory criteria, the new explosive will be approved in writing and assigned an EX number.

DATES: *Comments Due Date:* October 27, 2011.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2011–0157 (Notice No. 11–6)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Background

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) require that Division 1.1 fireworks must be examined by a DOT-approved explosives test laboratory and assigned a recommended shipping description, division, and compatibility group in accordance with § 173.56(b). The tests provided for the classification of Division 1.1 fireworks specified in §§ 173.57 and 173.58 describe the procedures used to determine the acceptance criteria and assignment of class and division for all new explosives.

The HMR also permit Division 1.1 firework devices that have been approved by the competent authority of a foreign government that PHMSA's Associate Administrator has acknowledged in writing as acceptable in accordance with 49 CFR § 173.56(g).

According to § 173.56(j), manufacturers of Division 1.3 and 1.4 fireworks or their designated U.S. agents may apply for an EX classification approval without prior examination by a DOT-approved explosives test laboratory if the firework device is manufactured in accordance with APA Standard 87–1 (IBR, see § 171.7), and the device passes the thermal stability test. Additionally, the applicant must certify that the firework device conforms to the APA Standard 87–1 and that the descriptions and technical information contained in the application are complete and accurate. PHMSA has in the past, on a case-by-case basis, approved some Division 1.1G fireworks without requiring testing by a DOT-approved explosives examination laboratory. However, we evaluate each EX approval application independently and have also required Division 1.1G fireworks to undergo examination testing by a DOT-approved explosive examination lab prior to issuing the EX approval.

While APA Standard 87–1 references two instances where Division 1.1 fireworks may be approved under the standard, it does not call for the level of testing required in the HMR, nor does it provide testing and criteria to determine when a firework ceases to be a Division 1.1 and becomes forbidden for transport.

We are clarifying our policy that all Division 1.1 fireworks must undergo examination by a DOT-approved explosives examination laboratory. However, if a fireworks device is classed and approved as a Division 1.1 firework, the UN Test Method 6 is not required. Rather, the testing will be limited to UN Test Method 4a(i) and 4b(ii), as is already specified in § 173.57(b). The examination laboratory may request additional information if necessary to make their classification recommendation. Additionally, we allow the laboratory to make a classification recommendation for Division 1.1 fireworks based on analogy.

PHMSA believes that by adhering to the requirements of the HMR and issuing Division 1.1 fireworks approvals only after a DOT-approved explosive laboratory has examined and recommended a classification, or an approval has been issued by a competent authority of a foreign government acknowledged by PHMSA's Associate Administrator, we are ensuring that fireworks transported in commerce meet the established criteria for their assigned classification, thereby minimizing the potential of the shipment of incorrectly classified or forbidden fireworks.

For these safety reasons, PHMSA is seeking comment on its clarification of its fireworks approvals policy whereby PHMSA will accept and issue only those classification approval applications for Division 1.1 fireworks that have been examined and assigned a recommended shipping description, division, and compatibility group by a DOT-approved explosives test laboratory in accordance with 49 CFR 173.56(b), or has been approved by the competent authority of a foreign government that PHMSA's Associate Administrator has acknowledged in writing as acceptable in accordance with 49 CFR 173.56(g).

Issued in Washington, DC on September 21, 2011.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–24686 Filed 9–26–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6 (Sub-No. 475X)]

BNSF Railway Company—Abandonment Exemption—in Boulder County, CO

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 1.37 miles of rail line extending between milepost 20.80 and milepost 22.17 at Lafayette, in Boulder County, CO (the Line). The Line traverses United States Postal Service Zip Code 80026 and includes no stations.

BNSF has certified that: (1) No local traffic has moved over the Line for at least 2 years; (2) the Line is stub-ended and not capable of handling any overhead traffic, therefore, there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 27, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 7, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 30, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by BNSF's filing of a notice of consummation by September 27, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 22, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Unit.

[FR Doc. 2011–24784 Filed 9–26–11; 8:45 am]

BILLING CODE 4915–01–P

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35387]

Ag Processing Inc A Cooperative—Petition for Declaratory Order; Institute Proceeding and Hold Oral Argument

In response to a petition filed by Ag Processing Inc A Cooperative (Ag Processing) regarding the reasonableness of a Norfolk Southern Railway Company (NSR) tariff, the Surface Transportation Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). The Board also will hold oral argument to address issues in this proceeding on Tuesday, October 25, 2011, at 9:30 a.m., in the hearing room at the Board's headquarters located at 395 E Street, SW., Washington, DC. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

On July 20, 2010, Ag Processing filed a petition for declaratory order challenging the reasonableness of an NSR tariff insofar as it imposes charges and penalties on loaded rail cars that exceed the car's weight limit as a result of weather conditions encountered after the car is delivered to the railroad. The petition was amended to add other shippers [1] and to continue the challenge after NSR revised the tariff. At Petitioners' request, the Board ordered the parties to mediate the dispute, but mediation was unsuccessful, and NSR filed a motion to dismiss the petition on January 27, 2011, along with confidential materials subject to a protective order. The Petitioners filed their reply on March 8, 2011.

The Board does not anticipate the need for additional evidentiary filings in this proceeding. The Board is setting this case for oral argument on the issues raised in this case. The parties should be prepared to discuss: (1) Industry practice relating to cars made overweight by snow or ice; (2) how frequently closed-hopper cars and tank cars are made overweight by snow and ice and how those cars have been brought into compliance in the past; (3) what NSR's overweight policies were prior to adopting the procedures in question; and (4) whether the agency's treatment of demurrage—which also involves issues of due diligence and equipment usage—is a useful model to employ here. The Petitioners and NSR will each have 20 minutes of argument time. The Petitioners may reserve part of their time for rebuttal if they so choose.

By October 18, 2011, each party shall submit to the Board the name of the counsel who will be presenting its argument. The Petitioners, in their filing, shall also address the requested time reserved for rebuttal, if any. Parties should prepare a short oral statement and be prepared to answer questions from the Board. The purpose of oral argument is to provide an opportunity for questions that the Board may have regarding any issue in the proceeding.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's website at *http://www.stb.dot.gov,* under ''Information Center''/''Webcast''/''Live Video'' on the home page.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, SW. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities

[1] The amended petition added Bunge North America, Inc., Archer Daniels Midland Company, Louis Dreyfus Corporation, and Perdue Agribusiness, Inc. as petitioners (collectively, Petitioners).

Act, and persons needing such accommodations should call (202) 245–0245, by the close of business on October 18, 2011.

For further information regarding the oral argument, contact Amy Ziehm, (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding under 5 U.S.C. 554 and 49 U.S.C. 721 is instituted.

2. Oral argument in this proceeding will be held on Tuesday, October 25, 2011, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, SW., Washington, DC, as described above.

3. By October 18, 2011, the participants shall submit to the Board the names of the counsel who will be presenting argument and the name of the party counsel will be representing. The Petitioners shall also address the requested time reserved for rebuttal, if any.

4. This decision is effective on the date of service.

Decided: September 21, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–24699 Filed 9–26–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Minority Veterans will meet on October 25–27, 2011, in room C–7 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The sessions will begin at 8 a.m. each day and adjourn at 6:15 p.m. on October 25; at 5:15 p.m. on October 26; and at 5 p.m. on October 27.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans; to assess the needs of minority Veterans; and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On October 25, the Committee will receive briefings and updates from the Veterans Health Administration, Center for Minority Veterans, Office of Policy and Planning, Human Resources and Administration, and a round table discussion with ex-officio members. On October 26, the Committee will receive briefings and updates on the National Cemetery Administration, Office of Public and Intergovernmental Affairs, Veterans Benefits Administration, and Office of Small and Disadvantaged Business Utilization. In the morning on October 27, the Committee will meet at VA Central Office and travel the Congressional Building to meet and have a roundtable discussion with the Congressional Tri-Caucus. Members of this Tri-Caucus include: Congressional Hispanic Caucus, Congressional Black Caucus, and Asian Pacific American Caucus. Upon conclusion, the Committee will adjourn to travel back to VA Central Office to begin working on their after action report. The Committee will receive public comments from 11 a.m. to 11:30 a.m. In the afternoon, the Committee will continue to work on their after action report.

A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Dwayne Campbell, Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Dwayne.campbell3@va.gov.* Any member of the public wishing to attend or seeking additional information should contact Mr. Campbell or Mr. Ronald Sagudan at (202) 461–6191 or by fax at (202) 273–7092.

Dated: September 22, 2011.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–24774 Filed 9–26–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 187 September 27, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mississippi Gopher Frog; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0024; MO 92210–0–0009]

RIN 1018–AW89

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mississippi Gopher Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; availability of draft economic analysis; and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Mississippi gopher frog (*Rana sevosa*) [= *Rana capito sevosa*] under the Endangered Species Act of 1973, as amended (Act). We also announce revisions to the proposed critical habitat units, as described in the proposed rule published in the **Federal Register** on June 3, 2010 (75 FR 31387), and announce the availability of the draft economic analysis (DEA) for the revised proposed critical habitat designation. This proposed rule replaces the previous June 3, 2010, proposed rule in its entirety. In total, approximately 2,839 hectares (ha) (7,015 acres (ac)) are being proposed for designation as critical habitat in 12 units, 3 of which are divided into 2 subunits each. The proposed critical habitat is located within St. Tammany Parish, Louisiana, and Forrest, Harrison, Jackson, and Perry Counties, Mississippi. The comment period will allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section.

DATES: We will accept comments received or postmarked on or before November 28, 2011. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 14, 2011.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R4–ES–2010–0024, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2010–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone: 601–321–1122; facsimile: 601–965–4340. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed designation of critical habitat for the Mississippi gopher frog, the DEA of the proposed designation of critical habitat for the Mississippi gopher frog, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Mississippi gopher frog habitat,

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why,

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Mississippi gopher frog and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area (especially Unit 1 in St. Tammany Parish, Louisiana) that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether we could improve or modify our approach to designation of critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) The appropriateness of the taxonomic name change of the Mississippi gopher frog from *Rana capito sevosa* to *Rana sevosa.*

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business

hours, at the U.S. Fish and Wildlife Service's Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0024 or by mail from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Mississippi gopher frog, refer to the final rule listing the species as endangered, which was published in the **Federal Register** on December 4, 2001 (66 FR 62993). See also the discussion of habitat in the Physical and Biological Features section below.

Taxonomy and Nomenclature

Subsequent to the listing of the Mississippi gopher frog, taxonomic research was completed which indicated that the listed entity (originally listed as a DPS of *Rana capito sevosa*) is different from other gopher frogs and warrants acceptance as its own species, *Rana sevosa* (Young and Crother 2001, pp. 382–388). The herpetological scientific community has accepted this taxonomic change, and, as a result, we announce our intention to revise our List of Endangered and Threatened Wildlife to reflect this change in nomenclature. The common name for *Rana sevosa* used in the most recent taxonomic treatment for reptiles and amphibians is dusky gopher frog (Crother *et al.* 2003, p. 197). However, we will continue to use the common name, Mississippi gopher frog, to describe the listed entity in order to avoid confusion with some populations of the eastern *Rana capito,* for which the common name of dusky gopher frog is still popularly used.

We also propose to remove the State of Florida from the ''Historic range'' column of the table entry in 50 CFR 17.11(h) since the areas currently listed (Alabama, Florida, Louisiana, and Mississippi) delineated the entire range, including unlisted portions, of the subspecies, *Rana capito sevosa.* Therefore, we propose to revise the ''Historic range'' column of the table entry in 50 CFR 17.11(h) to reflect the historical range of the listed entity, *Rana sevosa.* As a result of the name change, the species occupying the eastern portion of the range that includes the State of Florida is the unlisted *Rana capito.*

Geographic Range, Habitat, and Threats

The Mississippi gopher frog has a very limited historical range in Alabama, Mississippi, and Louisiana. At the time of listing in 2001, this species occurred at only one site, Glen's Pond, in the DeSoto National Forest in Harrison County, Mississippi (66 FR 62993). Mississippi gopher frog habitat includes both upland sandy habitats—historically forest dominated by longleaf pine (*Pinus palustris*)—and isolated temporary wetland breeding sites embedded within the forested landscape. Adult and subadult frogs spend the majority of their lives underground in active and abandoned gopher tortoise (*Gopherus polyphemus*) burrows, abandoned mammal burrows, and holes in and under old stumps (Richter *et al.* 2001, p. 318). Frequent fires are necessary to maintain the open canopy and ground cover vegetation of their aquatic and terrestrial habitat. The Mississippi gopher frog was listed as an endangered species due to its low population size and because of ongoing threats to the species and its habitat (66 FR 62993). Primary threats to the species include urbanization and associated development and road building; fire suppression; two potentially fatal amphibian diseases known to be present in the population; and the demographic effects of small population size (66 FR 62993; Sisson 2003, pp. 5, 9; Overstreet and Lotz 2004, pp. 1–13).

Current Status

Since the time of listing on December 4, 2001, we have used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources; Louisiana Department of Wildlife and Fisheries/Natural Heritage Program; Mississippi Museum of Natural Science/Mississippi Department of Wildlife, Fisheries, and Parks; Mississippi gopher frog researchers; and Service data and records to search for additional locations occupied, or with the potential to be occupied, by the Mississippi gopher frog. After reviewing the available information from the areas in the three States that were historically occupied by the Mississippi gopher frog, we determined that most of the potential restorable habitat for the species occurs in Mississippi. Wetlands throughout the coastal counties of Mississippi have been identified by using U.S. Geological Survey topographic maps, National Wetland Inventory maps, Natural Resource Conservation Service county soil survey maps, and satellite imagery. Although historically the Mississippi gopher frog was commonly found in the coastal counties of Mississippi (Allen 1932, p. 9; Neill 1957, p. 49), very few of the remaining ponds provide potential appropriate breeding habitat (Sisson 2003, p. 6). Nevertheless, two new naturally occurring populations of the Mississippi gopher frog were found in Jackson County, Mississippi (Sisson 2004, p. 8). Field surveys conducted in Alabama and Louisiana have been unsuccessful in documenting the continued existence of Mississippi gopher frogs in these States (Pechmann *et al.* 2006, pp. 1–23; Bailey 2009, pp. 1–2).

Due to the paucity of available suitable habitat for the Mississippi gopher frog, we have worked with our State, Federal, and nongovernmental partners to identify and restore upland and wetland habitats to create appropriate translocation sites for the species. We have focused our efforts on areas in the State of Mississippi. We identified 15 ponds and associated forested uplands that we considered to have restoration potential. These sites occur on the DeSoto National Forest (Harrison, Forrest, and Perry Counties), the Ward Bayou Wildlife Management Area (Jackson County), and two privately owned sites (Jackson County). We have used Glen's Pond and its surrounding uplands on the DeSoto National Forest, Harrison County, Mississippi, as a guide in our management efforts. Ongoing habitat management is being conducted at these areas to restore them as potential relocation sites for the Mississippi gopher frog. Habitat management at one of the privately owned sites (Unit 4, below) reached the point where we believed a translocation effort could be initiated. In 2004, we began releasing tadpoles and metamorphic frogs at a pond restored for use as a breeding site (Sisson et al. 2008, p. 16). In December 2007, Mississippi gopher frogs were heard calling at the site, and one egg mass was discovered (Baxley and Qualls 2007, pp. 14–15). Another gopher frog egg mass was found in the pond in 2010 (Lee 2010). As a result, we consider this site to be currently occupied by the species, bringing the total number of currently occupied sites to four.

Previous Federal Actions

The Mississippi gopher frog was listed as an endangered species under the Act on December 4, 2001 (66 FR 62993). It was at that time identified as *Rana capito sevosa,* a distinct population segment of the gopher frog *Rana capito* (see Taxonomy and Nomenclature discussion above). At the

time of listing the Service found that designation of critical habitat was prudent. However, the development of a designation was deferred due to budgetary and workload constraints.

On November 27, 2007, the Center for Biological Diversity and Friends of Mississippi Public Lands (plaintiffs) filed a lawsuit against the Service and the Secretary of the Interior for our failure to timely designate critical habitat for the Mississippi gopher frog (*Friends of Mississippi Public Lands and Center for Biological Diversity* v. *Kempthorne* (07–CV–02073)). In a court-approved settlement, the Service agreed to submit to the **Federal Register** a new prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by May 30, 2010, and a final designation by May 30, 2011. A proposed rule to designate critical habitat for the Mississippi gopher frog was published on June 3, 2010 (75 FR 31387).

During the comment period for the June 3, 2010, proposed rule, the peer reviewers and other commenters indicated they believed that the amount of critical habitat proposed was insufficient for the conservation of the Mississippi gopher frog and that additional habitat should be considered throughout the historical range of the species. Specifically, information was provided that pointed to limitations in the data we used to determine the size of individual critical habitat units and the presence of potential habitat in Louisiana which would aid in the conservation of Mississippi gopher frogs. Based on this new information, we asked the plaintiffs to agree to an extension for the final critical habitat determination. In a modification to the original settlement signed on May 4, 2011, the court agreed to the Service's timeline to send a revised proposed critical habitat rule to the **Federal Register** by September 15, 2011, and a final critical habitat rule to the **Federal Register** by May 30, 2012. Therefore, this proposed rule revises the June 3, 2010, proposed rule by expanding the areas to be designated as critical habitat.

Critical Habitat

Background

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

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

(a) Essential to the conservation of the species and

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

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

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

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed are included in a critical habitat designation if they contain the physical and biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the

species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

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

There is no documentation that the Mississippi gopher frog is threatened by collection. Although human visitation to Mississippi gopher frog habitat carries with it the possibility of introducing infectious disease and potentially increasing other threats where the frogs occur, the locations of important recovery areas are already accessible to the public through Web sites, reports, online databases, and other easily accessible venues. Therefore, identifying and mapping critical habitat is unlikely to increase threats to the species or its habitat.

In the absence of finding that the designation of critical habitat would increase threats to the species, if there are any benefits to a critical habitat designation, then a finding that designation is prudent is warranted. The potential benefits of critical habitat to the Mississippi gopher frog include: (1) Triggering consultation, under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur, because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that the designation of critical habitat is prudent for the Mississippi gopher frog.

Proposed Critical Habitat Designation for Mississippi Gopher Frog

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical and biological features required for the Mississippi gopher frog from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on December 4, 2001 (66 FR 62993). To identify the physical and biological features essential to the conservation of the Mississippi gopher frog, we have relied on current conditions at locations where the species survives, the limited information available on this species and its close relatives, as well as factors associated with the decline of other amphibians that occupy similar habitats in the lower Southeastern Coastal Plain (Service 2001, pp. 62993–63002).

We have determined that the Mississippi gopher frog requires the following physical and biological features:

Space for Individual and Population Growth and for Normal Behavior

Mississippi gopher frogs are terrestrial amphibians endemic to the longleaf pine ecosystem. They spend most of their lives underground in forested habitat consisting of fire-maintained, open-canopied woodlands historically dominated by longleaf pine (naturally occurring slash pine (*P. elliotti*) in wetter areas). Optimal habitat is created when management includes frequent fires which support a diverse ground cover of herbaceous plants, both in the uplands and in the breeding ponds (Hedman *et al.* 2000, p. 233; Kirkman *et al.* 2000, p. 373). Historically, fire-tolerant longleaf pine dominated the uplands; however, much of the original habitat has been converted to pine (often loblolly (*P. taeda*) or slash pine) plantations and has become a closed-canopy forest unsuitable as habitat for gopher frogs (Roznik and Johnson 2009a, p. 265).

During the breeding season, Mississippi gopher frogs leave their subterranean retreats in the uplands and migrate to their breeding sites during rains associated with passing cold fronts. Breeding sites are ephemeral (seasonally flooded) isolated ponds (not connected to other water bodies) located

in the uplands. Both forested uplands and isolated wetlands (see further discussion of isolated wetlands in ''Sites for Breeding, Reproduction, and Rearing of Offspring'' section) are needed to provide space for individual and population growth and normal behavior.

After breeding, adult Mississippi gopher frogs leave pond sites during major rainfall events. Metamorphic frogs follow, once their development is complete. Limited data are available on the distance between the wetland breeding and upland terrestrial habitats of post-larval and adult Mississippi gopher frogs. Richter *et al.* (2001, pp. 316–321) used radio transmitters to track a total of 13 adult frogs at Glen's Pond, the primary Mississippi gopher frog breeding site, located in Harrison County, Mississippi. The farthest movement recorded was 299 meters (m) (981 feet (ft)) by a frog tracked for 63 days from the time of its exit from the breeding site (Richter *et al.* 2001, p. 318). Tupy and Pechmann (2011, p. 1) conducted a more recent radio telemetry study of 17 Mississippi gopher frogs captured at Glen's Pond. The maximum distance traveled by one of these frogs to its underground refuge was 240 m (787 ft).

As a group, gopher frogs (*Rana capito* and *Rana sevosa*) are capable of moving surprising distances. In a study in the sandhills of North Carolina, the post-breeding movements of 17 gopher frogs were tracked (Humphries and Sisson 2011, p. 1). The maximum distance a frog was found from its breeding site was 3.5 kilometers (km) (2.2 miles (mi)). In Florida, gopher frogs have been found up to 2 km (1.2 mi) from their breeding sites (Carr 1940, p. 64; Franz *et al.* 1988, p. 82). The frequency of these long-distance movements is not known (see discussion in Roznik *et al.* 2009, p. 192). A number of other gopher frog studies have either tracked frogs or observed them in upland habitat at varying distances from their breeding ponds. These movements range from between the minimum of 240 m observed by Tupy and Pechmann (2011, p. 1) and the maximum of 3.5 km (2.2 mi) observed by Humphries and Sisson (2011, p. 1). These include studies or observations by Carr (1940), Franz *et al.* (1988), Phillips (1995), Rostal (1999), Neufeldt and Birkhead (2001), Blihovde (2006), Roznik (2007), and Roznik and Johnson (2009a and 2009b).

It is difficult to interpret habitat use for the Mississippi gopher frog from these available data. Movements are generally between breeding sites and belowground refugia. Distances moved are likely to be tied to the abundance and distribution of appropriate refugia, but these data are limited. We have assumed that the Mississippi gopher frog can move farther distances, and may use a larger area, than the existing data for the species indicate. Therefore, we have taken the mean of all the gopher frog movement data available to us (600 m (1,969 ft)) and are using this value when constructing the area around a breeding pond used by a Mississippi gopher frog population.

Due to the low number of occupied sites for the species, we are conducting habitat management at potential relocation sites with the hope of establishing new populations (see discussion above at *Geographic Range, Habitat, and Threats* and *Status* sections). When possible, we are managing wetlands within 1,000 m (3,281 ft) of each other, in these areas, as a block in order to create multiple breeding sites and metapopulation structure (defined as neighboring local populations close enough to one another that dispersing individuals could be exchanged (gene flow) at least once per generation) in support of recovery (Marsh and Trenham 2001, p. 40; Richter *et al.* 2003, p. 177).

Due to fragmentation and destruction of habitat, the current range of naturally occurring Mississippi gopher frogs has been reduced to three sites. In addition, optimal terrestrial habitat for gopher frogs is considered to be within burrows of the gopher tortoise, a rare and declining species that is listed as threatened under the Act within the range of the Mississippi gopher frog. Therefore, this specialized microhabitat has been reduced as well as the surrounding forested habitat. Fragmentation and loss of the frog's habitat has subjected the species' small, isolated populations to genetic isolation and reduction of space for reproduction, development of young, and population maintenance; thus, the likelihood of population extinction has increased (U.S. Fish and Wildlife Service 2001, pp. 62993–63002). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental changes, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93–107). Long-term viability is founded on the existence of numerous interbreeding local populations throughout the range (Harris 1984, pp. 93–107).

Connectivity of Mississippi gopher frog breeding and nonbreeding habitat within the geographic area occupied by the species must be maintained to support the species' survival (Semlitsch 2002, p. 624; Harper *et al.* 2008, p. 1205). Additionally, connectivity of these sites with other areas outside the geographic area occupied currently by the Mississippi gopher frog is essential for the conservation of the species (Semlitsch 2002, p. 624; Harper *et al.* 2008, p. 1205). It allows for gene flow among local populations within a metapopulation, which enhances the likelihood of metapopulation persistence and allows for recolonization of sites that are lost due to drought, disease, or other factors (Hanski and Gilpin 1991, pp. 4–6).

Based on the biological information and needs discussed above, we identify ephemeral isolated ponds and associated forested uplands, and connectivity of these areas, to be physical and biological features necessary to accommodate breeding, growth, and other normal behaviors of the Mississippi gopher frog and to promote genetic flow within the species.

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

Mississippi gopher frog tadpoles eat periphyton (microscopic algae, bacteria, and protozoans) from surfaces of emergent vegetation or along the pond bottom, as is typical of pond-type tadpoles (Duellman and Trueb 1986, p. 159). Juvenile and adult gopher frogs are carnivorous. Insects found in their stomachs have included carabid (*Pasimachus* sp.) and scarabaeid (genera *Canthon* sp. and *Ligryus* sp.) beetles (Netting and Goin 1942, p. 259) and *Ceuthophilus* crickets (Milstrey 1984, p. 10). Mississippi gopher frogs are gape-limited (limited by the size of the jaw opening) predators with a diet probably similar to that reported for other gopher frogs, including frogs, toads, beetles, hemipterans, grasshoppers, spiders, roaches, and earthworms (Dickerson 1969, p. 196; Carr 1940, p. 64). Within the pine uplands, a diverse and abundant herbaceous layer consisting of native species, maintained by frequent fires, is important to maintain the prey base for juvenile and adult Mississippi gopher frogs. Wetland water quality and an open canopy (Skelly *et al.* 2002, p. 983) are important to the maintenance of the periphyton that serves as a food source for Mississippi gopher frog tadpoles.

Therefore, based on the biological information and needs discussed above, we identify ephemeral, isolated ponds with emergent vegetation, and open-canopied pine uplands with a diverse herbaceous layer, as physical and biological features necessary to provide for adequate food sources for the Mississippi gopher frog.

Cover or Shelter

Amphibians need to maintain moist skin for respiration (breathing) and osmoregulation (controlling the amounts of water and salts in their bodies) (Duellman and Trueb 1986, pp. 197–222). Since Mississippi gopher frogs disperse from their aquatic breeding sites to the uplands where they live as adults, desiccation (drying out) can be a limiting factor in their movements. Thus, it is important that areas connecting their wetland and terrestrial habitats are protected in order to provide cover and appropriate moisture regimes during their migration. Richter *et al.* (2001, pp. 317–318) found that during migration, Mississippi gopher frogs used clumps of grass or leaf litter for refuge. Protection of this connecting habitat may be particularly important for juveniles as they move out of the breeding pond for the first time. Studies of migratory success in post-metamorphic amphibians have demonstrated the importance of high levels of survival of these individuals to population maintenance and persistence (Rothermel 2004, pp. 1544–1545).

Both adult and juvenile Mississippi gopher frogs spend most of their lives underground in forested uplands (Richter *et al.* 2001, p. 318). Underground retreats include gopher tortoise burrows, small mammal burrows, stump holes, and root mounds of fallen trees (Richter *et al.* 2001, p. 318). Availability of appropriate underground sites is especially important for juveniles in their first year. Survival of juvenile gopher frogs in northcentral Florida was found to be dependent on their use of underground refugia (Roznik and Johnson 2009b, p. 431). Mortality for a frog occupying an underground refuge was estimated to be only 4 percent of the likelihood of mortality for a frog not occupying an underground refuge (Roznik and Johnson 2009b, p. 434).

Therefore, based on the biological information and needs discussed above, we identify appropriate connectivity habitat between wetland and upland sites (to support survival during migration), and a variety of underground retreats such as gopher tortoise burrows, small mammal burrows, stump holes, and root mounds of fallen trees within non-wetland habitats (to provide cover and shelter), to be essential physical and biological features for the Mississippi gopher frog.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Mississippi gopher frog breeding sites are isolated ponds that dry completely on a cyclic basis. Faulkner (U.S. Fish and Wildlife Service 2001, p. 62994) conducted hydrologic research at the Glen's Pond site on DeSoto National Forest, Harrison County, Mississippi. He described the pond as a depressional feature on a topographic high. The dominant source of water to the pond is rainfall within a small, localized watershed that extends 61 to 122 m (200 to 400 ft) from the pond's center. Substantial winter rains are needed to ensure that the pond fills sufficiently to allow hatching, development, and metamorphosis (change to adults) of larvae. The timing and frequency of rainfall are critical to the successful reproduction and recruitment of Mississippi gopher frogs. Adult frogs move to wetland breeding sites during heavy rain events, usually from January to late March (Richter and Seigel 2002, p. 964).

Studies at Glen's Pond indicate that this breeding pond is approximately 1.5 ha (3.8ac) when filled and attains a maximum depth of 1.1 m (3.6 ft) (Thurgate and Pechmann 2007, p. 1846). The pond is hard-bottomed, has an open canopy, and contains emergent and submergent vegetation. It is especially important that a breeding pond have an open canopy: though the mechanism is unclear, it is believed an open canopy is critical to tadpole development. Experiments conducted by Thurgate and Pechmann (2007, pp. 1845–1852) demonstrated the lethal and sublethal effects of canopy closure on Mississippi gopher frog tadpoles. The general habitat attributes of the other three Mississippi gopher frog breeding ponds are similar to those of Glen's Pond. Female Mississippi gopher frogs attach their eggs to rigid vertical stems of emergent vegetation (Young 1997, p. 48). Breeding ponds typically dry in early to mid-summer, but on occasion have remained wet until early fall (Richter and Seigel 1998, p. 24). Breeding ponds of closely related gopher frogs in Alabama and Florida have similar structure and function to those of the Mississippi gopher frog (Bailey 1990, p. 29; Palis 1998, p. 217; Greenberg 2001, p. 74).

An unpolluted wetland with water free of predaceous fish, sediment, pesticides, and chemicals associated with road runoff is important for egg development, tadpole growth and development, and successful mating and egg laying by adult frogs.

Therefore, based on the biological information and needs discussed above, we identify isolated ponds with hard bottoms, open canopies, emergent vegetation, and water free of predaceous fish, sediment, pesticides, and chemicals associated with road runoff to be physical and biological features essential for breeding and development of the Mississippi gopher frog.

Primary Constituent Elements for the Mississippi Gopher Frog

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the Mississippi gopher frog in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Mississippi gopher frog are:

(1) Primary Constituent Element 1—*Ephemeral wetland habitat.* Breeding ponds, geographically isolated from other waterbodies and embedded in forests historically dominated by longleaf pine communities, that are small (generally <0.4 to 4.0 ha (<1 to 10 ac), ephemeral, and acidic. Specific conditions necessary in breeding ponds to allow for successful reproduction of Mississippi gopher frogs are:

(a) An open canopy with emergent herbaceous vegetation for egg attachment;

(b) An absence of large, predatory fish which prey on frog larvae;

(c) Water quality such that frogs, their eggs, or larvae are not exposed to pesticides or chemicals and sediment associated with road runoff; and

(d) Surface water that lasts for a minimum of 195 days during the breeding season to allow a sufficient period for larvae to hatch, mature, and metamorphose.

(2) Primary Constituent Element 2—*Upland forested nonbreeding habitat.* Forests historically dominated by longleaf pine, adjacent and accessible to and from breeding ponds, that is maintained by fires frequent enough to support an open canopy and abundant herbaceous ground cover and gopher tortoise burrows, small mammal burrows, stump holes, or other underground habitat that the Mississippi gopher frog depends upon for food, shelter, and protection from the elements and predation.

(3) Primary Constituent Element 3—*Upland connectivity habitat.* Accessible upland habitat between breeding and nonbreeding habitats to allow for Mississippi gopher frog movements between and among such sites. It is characterized by an open canopy and abundant native herbaceous species and subsurface structure which provides shelter for Mississippi gopher frogs during seasonal movements, such as that created by deep litter cover, clumps of grass, or burrows.

With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. All proposed critical habitat units are within the species' historical geographic range and contain sufficient primary constituent elements to support at least one life-history function of the Mississippi gopher frog. Four units/subunits (Unit 2, Subunit A; Unit 4, Subunit A; Unit 5, Subunit A; and Unit 7) are currently occupied by the species; of these four units/subunits, only Unit 2, Subunit A was occupied at the time of listing. All of the other units/subunits proposed as critical habitat are currently unoccupied, but contain sufficient primary constituent elements to support all the life-history functions essential for the conservation of the species with the exception of Unit 1. Unit 1 only contains one primary constituent element (ephemeral wetland habitat). This unit is needed as a future site for frog reestablishment and is essential for the conservation of the species. Within Unit 1, the other primary constituent elements could be restored with a reasonable level of effort.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

All areas proposed for designation as critical habitat will require some level of management to address the current and future threats to the Mississippi gopher frog and to maintain or restore the primary constituent elements. The features essential to the conservation of this species may require special management considerations or protection to reduce various threats, in or adjacent to proposed critical habitat, that may affect one or more of the primary constituent elements. Special management of ephemeral wetland breeding sites (Primary Constituent Element 1) will be needed to ensure that these areas provide water quantity, quality, and appropriate hydroperiod; cover; and absence from levels of predation and disease that can affect population persistence. In nonbreeding upland forested areas (Primary Constituent Elements 2 and 3), special management will be needed to ensure an open canopy and abundant herbaceous ground cover; underground habitat for adult and subadult frogs to occupy; and sufficient cover as frogs migrate to and from breeding sites.

A detailed discussion of activities influencing the Mississippi gopher frog and its habitat can be found in the final listing rule (66 FR 62993; December 4, 2001). The features essential to the conservation of this species may require special management considerations or protection to reduce threats posed by: Land use conversions, primarily urban development and conversion to agriculture and pine plantations; stump removal and other soil-disturbing activities that destroy the belowground structure within forest soils; fire suppression and low fire frequencies; wetland destruction and degradation; random effects of drought or floods; off-road vehicle use; use of gas, water, electrical power, and sewer easements; and activities that disturb underground refugia used by Mississippi gopher frogs for foraging, protection from predators, and shelter from the elements. Other activities that may affect primary constituent elements in the proposed critical habitat units include those listed in the Effects of Critical Habitat Designation section below.

Special management considerations or protection are required within critical habitat areas to address the threats identified above. Management activities that could ameliorate these threats include (but are not limited to): Maintaining critical habitat areas as forested pine habitat (preferably longleaf pine); conducting forestry management using prescribed burning, avoiding the use of beds when planting trees, and reducing planting densities to create or maintain an open canopied forest with abundant herbaceous ground cover; maintaining forest underground structure such as gopher tortoise burrows, small mammal burrows, and stump holes; and protecting ephemeral wetland breeding sites from chemical and physical changes to the site that could occur by presence or construction of ditches or roads.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographic area occupied by the species at the time of listing in 2001. We also are proposing to designate specific areas outside the geographic area occupied by the species at the time of listing, including those that are currently occupied, and others which are currently unoccupied. Most of the unoccupied areas considered for inclusion are part of ongoing recovery initiatives for this species. All areas proposed for critical habitat designation outside the area occupied by the species at the time of listing are considered to be essential for the conservation of the species.

Mississippi gopher frogs require small, isolated, acidic, depressional standing bodies of freshwater for breeding, upland pine forested habitat that has an open canopy maintained by fire for nonbreeding habitat, and upland connectivity habitat areas that allow for movement between nonbreeding and breeding sites. The range of the Mississippi gopher frog has been severely curtailed, occupied habitats are limited and isolated, and population sizes are extremely small and at risk of extirpation and extinction from stochastic events that occur as periodic natural events or existing or potential human-induced events (U.S. Fish and Wildlife Service 2001, pp. 62993–63002). To reduce the risk of extinction through these processes, it is important to establish multiple protected subpopulations across the landscape (Soulé and Simberloff 1986, pp. 25–35; Wiens 1996, pp. 73–74). We considered the following criteria in the selection of areas that contain the essential features for the Mississippi gopher frog when designating units: (1) The historical distribution of the species; (2) presence of open-canopied, isolated wetlands; (3) presence of open-canopied, upland pine forest in sufficient quantity around each wetland location to allow for sufficient survival and recruitment to maintain a breeding population over the long term;

(4) open-canopied, forested connectivity habitat between wetland and upland sites; and (5) multiple isolated wetlands in upland habitat that would allow for the development of metapopulations.

We began our determination of which areas to designate as critical habitat for the Mississippi gopher frog with an assessment of the critical life-history components of the Mississippi gopher frog, as they relate to habitat. We then evaluated the Mississippi gopher frog in the context of its historical (Alabama, Louisiana, and Mississippi) and current (Mississippi) distribution to establish what portion of its range still contains the physical and biological features that are essential to the conservation of the species. We reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of this species. Our sources included surveys, unpublished reports, and peer-reviewed scientific literature prepared by the Alabama Department of Conservation and Natural Resources, Mississippi Department of Wildlife, Fisheries, and Parks, and Mississippi gopher frog researchers; Service data and publications such as the final listing rule for the Mississippi gopher frog; and Geographic Information System (GIS) data (such as species occurrence data, habitat data, land use, topography, digital aerial photography, and ownership maps).

In Alabama, we were unable to identify habitat that met the requirements for sustaining the essential life-history functions of the species. No historical breeding sites for the species are known in Alabama. The only record is from 1922 in Mobile County near Mobile Bay. Bailey (1994, p. 5) visited this general area and noted that, although residential development and fire suppression had drastically altered the upland habitat, large longleaf pines still present in lawns and vacant lots indicated that the area was formerly suitable habitat for gopher frogs. Ponds that have potential as breeding sites for the Mississippi gopher frog have been identified in Choctaw, Mobile, and Washington Counties, Alabama, using aerial imagery (Bailey 2009, p. 1). However, no Mississippi gopher frogs have been found at these sites, and at this time, we do not consider them to be essential to the conservation of the species.

In Louisiana, we assessed the condition of the last known breeding pond for the species there (Thomas and Ballew 1997, p. 4–5). We found that the pond, and a series of others, contained the habitat requirements for Primary Constituent Element 1.

Within the historical distribution of the frog in Mississippi, wetlands throughout the coastal counties were identified using U.S. Geological Survey topographic maps, National Wetland Inventory maps, Natural Resource Conservation Service county soil survey maps, and satellite imagery. Habitat with the best potential of establishing the physical and biological features essential to the conservation of the Mississippi gopher frog were concentrated on the DeSoto National Forest in Forrest, Harrison, and Perry Counties in southern Mississippi. Some additional sites were found in Jackson County on Federal land being managed by the State as a Wildlife Management Area and on private land being managed as a wetland mitigation bank. Habitat restoration efforts have been successful in establishing at least one of the primary constituent elements on each of these sites, and management is continuing, with the goal of establishing all of the primary constituent elements at all of the sites.

Only one subunit (Unit 2, subunit A) is known to have been occupied at the time of listing in December 2001. We believe this occupied area, which we are proposing as critical habitat, contains sufficient primary constituent elements to support life-history functions essential to the conservation of the species. Sites not known to be occupied at the time of listing in December 2001 are also proposed as critical habitat. These sites are all within the historical range of the Mississippi gopher frog. The inclusion of these areas will provide habitat for population translocation and will decrease the risk of extinction of the species. Three units/subunits (Unit 4, subunit A, Unit 5, subunit A, and Unit 7) are currently occupied by the Mississippi gopher frog, but were discovered subsequent to the listing of the species. Eleven units/subunits, not known to be occupied at the time of listing, are currently unoccupied. One of the units (Unit 1) represents a historical record for the Mississippi gopher frog. The historical occupancy status of the other 10 units/subunits is unknown. All 14 units/subunits not known to be occupied at the time of listing, which were unoccupied or not known to be occupied at that time, are being proposed as critical habitat because they are considered essential for the conservation of the species. The Mississippi gopher frog is at high risk of extirpation from stochastic events, such as disease or drought, and from demographic factors such as inbreeding depression. The establishment of additional populations beyond the single site known to be occupied at listing is critical to protect the species from extinction and provide for the species' eventual recovery.

We have determined that, with proper protection and management, the areas we are proposing for critical habitat are needed for the conservation of the species based on our current understanding of the species' requirements. However, as discussed in the Critical Habitat section above, we recognize that designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of the species and that for this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

We delineated the critical habitat unit boundaries using the following steps:

(1) We used digital aerial photography using ArcMap 9.3.1 to map the specific location of the breeding site occupied by the Mississippi gopher frog at the time of listing, and those locations of breeding sites outside the geographic area occupied by the species at the time it was listed, both occupied and not occupied, that were determined to be essential for the conservation of the species.

(2) We delineated proposed critical habitat units by buffering the above locations by a radius of 650 m (2,133 ft). We believe the area created would protect the majority of a Mississippi gopher frog population's breeding and upland habitat and incorporate all primary constituent elements within the critical habitat unit. We chose the value of 650 m (2,133 ft) by using the mean farthest distance movement (600 m (1,969 ft)) from data collected during multiple studies of the gopher frog group (see discussion under Space for Individual and Population Growth and for Normal Behavior) and adding 50 m (164 ft) to this distance to minimize the edge effects of the surrounding land use (see discussion in Semlitsch and Bodie 2003, pp. 1222–1223).

(3) We used aerial imagery and ArcMap to connect critical habitat areas within 1,000 m (3,281 ft) of each other to create routes for gene flow between breeding sites and metapopulation structure (see discussion under Space for Individual and Population Growth and for Normal Behavior).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack

physical and biological features necessary for the Mississippi gopher frog. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

In summary, we are proposing areas for critical habitat designation that we have determined were occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of the species, and areas outside the geographic area occupied at the time of listing that we have determined are essential for the conservation the Mississippi gopher frog. Twelve units, three of which are divided into two subunits each, were proposed for designation based on sufficient elements of physical and biological features present to support the Mississippi gopher frog life-history processes. Some units/subunits contained all of the identified elements of physical and biological features and supported multiple life-history processes. Other units contained only some elements of the physical and biological features necessary to support the Mississippi gopher frog's particular use of that habitat.

Proposed Critical Habitat Designation

We are proposing 15 units/subunits as critical habitat for the Mississippi gopher frog. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Mississippi gopher frog. Table 1 below shows the specific occupancy status of each unit/subunit at the time of listing and currently.

TABLE 1—OCCUPANCY OF MISSISSIPPI GOPHER FROG PROPOSED CRITICAL HABITAT UNITS

Unit	Parish/county	Currently occupied and known to be occupied at the time of listing	Currently occupied but not known to be occupied at the time of listing	Currently unoccupied and not known to be occupied at the time of listing
LOUISIANA				
1	St. Tammany			X
MISSISSIPPI				
2, Subunit A	Harrison	X		
2, Subunit B	Harrison			X
3	Jackson			X
4, Subunit A	Jackson		X	
4, Subunit B	Jackson			X
5, Subunit A	Jackson		X	
5, Subunit B	Jackson			X
6	Jackson			X
7	Jackson		X	
8	Forrest			X
9	Forrest			X
10	Perry			X
11	Perry			X
12	Perry			X

Table 2 provides the approximate area and ownership of each proposed critical habitat unit. Hectare and acre values were individually computer-generated using GIS software, rounded to nearest whole number, and then summed.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS WITH AREA ESTIMATES (HECTARES (HA) AND ACRES (AC)) AND LAND OWNERSHIP FOR THE MISSISSIPPI GOPHER FROG. AREA SIZES MAY NOT SUM DUE TO ROUNDING

Unit	Parish/county	Ownership			Total area
		Federal	State	Private	
LOUISIANA					
1	St. Tammany			667 ha (1,649 ac)	667 ha (1,649 ac).
MISSISSIPPI					
2, Subunit A	Harrison	109 ha (269 ac)		24 ha (59 ac)	133 ha (329 ac).
2, Subunit B	Harrison	436 ha (1,077 ac)		3 ha (7 ac)	439 ha (1,085 ac).
3	Harrison	133 ha (329 ac)			133 ha (329 ac).
4, Subunit A	Jackson			133 ha (329 ac)	133 ha (329 ac).
4, Subunit B	Jackson	52 ha (129 ac)		113 ha (279 ac)	165 ha (408 ac).
5, Subunit A	Jackson			133 ha (329 ac)	133 ha (329 ac).

TABLE 2—PROPOSED CRITICAL HABITAT UNITS WITH AREA ESTIMATES (HECTARES (HA) AND ACRES (AC)) AND LAND OWNERSHIP FOR THE MISSISSIPPI GOPHER FROG. AREA SIZES MAY NOT SUM DUE TO ROUNDING—Continued

Unit	Parish/county	Ownership			Total area
		Federal	State	Private	
5, Subunit B	Jackson			56 ha (138 ac)	56 ha (138 ac).
6	Jackson	133 ha (329 ac)			133 ha (329 ac).
7	Jackson		116 ha (287 ac)	17 ha (42 ac)	133 ha (329 ac).
8	Forrest	133 ha (329 ac)			133 ha (329 ac).
9	Forrest	131 ha (324 ac)		2 ha (5 ac)	133 ha (329 ac).
10	Perry	135 ha (334 ac)		47 ha (116 ac)	182 ha (450 ac).
11	Perry	129 ha (319 ac)		4 ha (10 ac)	133 ha (329 ac).
12	Perry	125 ha (309 ac)		8 ha (20 ac)	133 ha (329 ac).
Total	All Parishes and Counties.	1,516 ha (3,746 ac)	116 ha (287 ac)	1,207 ha (2,983 ac)	2,839 ha (7,015 ac).

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Mississippi gopher frog, below.

Unit 1: St. Tammany Parish, Louisiana

Unit 1 encompasses 667 ha (1,649 ac) on private lands in St. Tammany Parish, Louisiana. This unit is located north and south of State Hwy. 36, approximately 3.1 km (1.9 mi) west of State Hwy. 41 and the town of Hickory, Louisiana. Unit 1 is not within the geographic area occupied by the species at the time of listing. It is currently unoccupied; however, one of the ponds in the unit is where gopher frogs were last observed in Louisiana in 1965. We believe this unit is essential for the conservation of the species because it provides additional habitat for population expansion outside of the core population areas in Mississippi. Unit 1 consists of five ponds (ephemeral wetland habitat) and their associated uplands. If Mississippi gopher frogs are translocated to the site, the five areas are in close enough proximity to each other that gopher frogs could move between them. The uplands associated with the ponds do not currently contain the essential biological and physical features of critical habitat; however, we believe them to be restorable with reasonable effort. We believe this unit provides potential for establishing new breeding ponds and metapopulation structure which will support recovery of the species. Maintaining these ponds as suitable breeding habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the risk of extinction of the species resulting from stochastic events and to provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Unit 1 is currently managed as industrial forest land. Threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog within this unit include the potential of: hydrologic changes resulting from ditches, or adjacent highways and roads that could alter the ecology of the ponds; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban and residential development (see also discussion in Special Management Considerations or Protection section).

Unit 2: Harrison County, Mississippi

Unit 2 comprises two subunits encompassing 572 ha (1,413 ac) on Federal and private lands in Harrison County, Mississippi. This unit, between U.S. Hwy. 49 and Old Hwy. 67, is approximately 224 m (735 ft) northeast of the Biloxi River. It is located approximately 2.8 km (1.8 mi) east of U.S. Hwy. 49 and approximately 2.3 km (1.4 mi) west of Old Hwy. 67. Within this unit, approximately 545 ha (1,347 ac) are in the DeSoto National Forest and 27 ha (67 ac) are in private ownership.

Subunit A

Unit 2, Subunit A encompasses 133 ha (329 ac) around the only breeding pond (Glen's Pond) known for the Mississippi gopher frog when it was listed in 2001; as a result, it is within the geographic area of the species occupied at the time of listing. In addition, this subunit contains all elements of the essential physical and biological features of the species. The majority of this subunit (109 ha (269 ac)) is on the DeSoto National Forest, with the remainder of the subunit (24 ha (59 ac)) in private ownership. This subunit is proposed as critical habitat because it was occupied at the time of listing, is currently occupied, and contains sufficient primary constituent elements (ephemeral wetland habitat, upland forested nonbreeding habitat, and upland connectivity habitat) to support life-history functions essential to the conservation of the species.

Glen's Pond and the habitat surrounding it, consisting of forested uplands used as nonbreeding habitat and upland connectivity habitat between breeding and nonbreeding habitat, support the majority of the Mississippi gopher frogs that currently exist in the wild. Within Unit 2, Subunit A, the Mississippi gopher frog and its habitat may require special management considerations or protection to address potential adverse effects caused by: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Subunit B

Unit 2, Subunit B encompasses 439 ha (1,084 ac) adjacent to Subunit A and the area surrounding Glen's Pond. The majority of this subunit (436 ha (1,077 ac)) is on the DeSoto National Forest, with the remainder of the subunit (3 ha (7 ac)) in private ownership. This subunit is not within the geographic area of the species occupied at the time of listing and is currently unoccupied. However, we believe this subunit is essential for the conservation of the Mississippi gopher frog because it consists of areas, within the dispersal range of the Mississippi gopher frog (from Subunit A), which we believe provides potential for establishing new

breeding ponds and metapopulation structure that will protect the Mississippi gopher frog from extinction. This unoccupied area consists of three ponds and their associated uplands on the DeSoto National Forest. These ponds have been named Reserve Pond, Pony Ranch Pond, and New Pond during ongoing recovery initiatives. The U.S. Forest Service (USFS) is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species is at high risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. This subunit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 2, Subunit B, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 3: Harrison County, Mississippi

Unit 3 encompasses 133 ha (329 ac) on Federal land in Harrison County, Mississippi. This unit is located on the DeSoto National Forest approximately 7.9 km (4.9 mi) east of the community of Success at Old Hwy. 67 and 4 km (2.5 mi) south of Bethel Road.

Unit 3 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area surrounds a pond on the DeSoto National Forest given the name of Carr Bridge Road Pond during ongoing recovery initiatives when it was selected as a Mississippi gopher frog translocation site. The USFS is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and to provide for the species' eventual recovery. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains a potential breeding pond surrounded by uplands which provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Within Unit 3, threats to the elements of essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 4: Jackson County, Mississippi

Unit 4 encompasses 298 ha (736 ac) on Federal and private land in Jackson County, Mississippi. This unit borders the north side of Interstate 10 approximately 1.1 km (0.7 mi) west of State Hwy. 57. Within this unit, approximately 52 ha (129 ac) are in the Mississippi Sandhill Crane National Wildlife Refuge and 246 ha (608 ac) are in private ownership.

Subunit A

Unit 4, Subunit A encompasses 133 ha (329 ac) on private land. It is currently occupied as a result of translocation efforts conducted in 2004, 2005, 2007, 2008, 2009, and 2010; however, it was not occupied at the time of listing. We believe this subunit is essential for the conservation of the Mississippi gopher frog because of the presence of a proven breeding pond (egg masses have been deposited here in 2007 and 2010 by gopher frogs translocated to the site) and its associated uplands (upland forested nonbreeding habitat and upland connectivity habitat). We also believe that metapopulation structure, which will further protect the Mississippi gopher frog from extinction, is possible when the whole area of Unit 4 is considered. The private owners of this property are actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at high risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs can continue to be translocated is essential to decrease the risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. This subunit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 4, Subunit A, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Subunit B

Unit 4, Subunit B encompasses 165 ha (408 ac) on Federal and private land adjacent to Subunit A. The majority of this subunit (113 ha (279 ac)) is on private land, with the remainder of the unit (52 ha (129 ac)) on the Mississippi Sandhill Crane National Wildlife Refuge. This subunit is not within the geographic area of the species occupied at the time of listing and is currently unoccupied. However, we believe this subunit is essential for the conservation of the Mississippi gopher frog because it consists of an area, within the dispersal range of the Mississippi gopher frog (from Subunit A), which we believe provides potential for establishing new breeding ponds and metapopulation structure that will protect the Mississippi gopher frog from extinction. This unoccupied area consists of two ponds and their associated uplands. This area is actively managed to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat is essential to decrease the potential risk of extinction of the species and provide for

the species' eventual recovery. This subunit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 4, Subunit B, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 5: Jackson County, Mississippi

Unit 5 encompasses 189 ha (467ac) on private land in Jackson County, Mississippi. This unit is located approximately 10.6 km (6.6 mi) north of Interstate 10. It is 124 m (407 ft) north of Jim Ramsey Road and 5.7 km (3.6 mi) west of the community of Vancleave located near State Hwy. 57.

Subunit A

Unit 5, Subunit A encompasses 133 ha (329 ac) on private land. It is currently occupied, but was not known to be occupied at the time of listing. This subunit contains a breeding site where Mississippi gopher frogs were discovered in 2004, subsequent to the listing of the Mississippi gopher frog.

We believe this subunit is essential for the conservation of the Mississippi gopher frog because of the presence of a proven breeding pond, designated Mike's Pond (ephemeral wetland habitat), and its associated uplands (upland forested nonbreeding habitat and upland connectivity habitat). We also believe that metapopulation structure, which will further protect the Mississippi gopher frog from extinction, is possible when the whole area of Unit 5 is considered. The private owners of this property are actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at high risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat is essential to decrease the risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. This subunit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 5, Subunit A, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Subunit B

Unit 5, Subunit B encompasses 56 ha (138 ac) on private land adjacent to Subunit A. This subunit is not within the geographic area of the species occupied at the time of listing and is currently unoccupied. However, we believe this subunit is essential for the conservation of the Mississippi gopher frog because it consists of an area, within the dispersal range of the Mississippi gopher frog (from Subunit A), which we believe provides potential for establishing a new breeding pond and metapopulation structure that will protect the Mississippi gopher frog from extinction. This unoccupied area consists of a single pond and its associated uplands. This area is actively managed to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat is essential to decrease the potential risk of extinction of the species and provide for the species' eventual recovery. This subunit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 5, Subunit B, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 6: Jackson County, Mississippi

Unit 6 encompasses 133 ha (329 ac) on Federal land in Jackson County, Mississippi. This unit is located on the Ward Bayou Wildlife Management Area (WMA) approximately 4.8 km (3 mi) northeast of State Hwy. 57 and the community of Vancleave. This land is owned by the Army Corps of Engineers (Corps) and managed by the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP).

Unit 6 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of a pond and its associated uplands on the WMA and has been given the name of Mayhaw Pond during ongoing recovery initiatives. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains elements of features essential to the conservation of the species, a potential breeding pond and the surrounding uplands, that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Unit 6 is being actively managed by the Corps and MDWFP to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area of suitable habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the potential risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 6, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 7: Jackson County, Mississippi

Unit 7 encompasses 133 ha (329 ac) on State and private land in Jackson County, Mississippi. This unit is located approximately 4.2 km (2.6 mi) east of the intersection of State Hwy. 63 and State Hwy. 613; it is 3.8 km (2.4 mi) west of the Escatawpa River, and 3.2 km (2 mi) northeast of Helena, Mississippi. The portion of this unit in State ownership (116 ha (287 ac)) is 16th section land held in trust by the State of Mississippi as a local funding source for education in Jackson County. The local Jackson County School board has jurisdiction and control of the land. The balance of this unit is on private land (17 ha (42 ac)).

Unit 7 is currently occupied, but was not known to be occupied at the time of listing. The area, discovered in 2004 subsequent to the listing of the Mississippi gopher frog, contains a breeding pond designated McCoy's Pond and associated uplands. We believe this area is essential for the conservation of the species because it represents habitat naturally occupied by the Mississippi gopher frog and will support recovery of the species. Currently, the State-owned portion of the area is managed by the Mississippi Forestry Commission for timber production for the Jackson County School Board. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, it may be at high risk of extirpation from stochastic events, such as disease or drought. Maintaining this area of currently occupied habitat for Mississippi gopher frogs is essential to decrease the risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 7, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 8: Forrest County, Mississippi

Unit 8 encompasses 133 ha (329 ac) on Federal land in Forrest County, Mississippi. This unit is located on the DeSoto National Forest approximately 1.9 km (1.2 mi) east of U.S. Hwy. 49, approximately 1.7 km (1.1 mi) south of Black Creek, and approximately 3.1 km (1.9 mi) southeast of the community of Brooklyn, Mississippi.

Unit 8 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of a pond and associated uplands that have been selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains elements of features essential to the conservation of the species, a potential breeding pond and surrounding uplands, that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Unit 8 is being actively managed by the USFS to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the potential risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 8, threats to the elements of essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 9: Forrest County, Mississippi

Unit 9 encompasses 133 ha (329 ac) on Federal land and private land in Forrest County, Mississippi. The majority of this unit (131 ha (324)) is located on the DeSoto National Forest and the balance (2 ha (5 ac)) is located on private land. This unit is located approximately 3.9 km (2.4 mi) east of U.S. Hwy. 49, approximately 4.3 km (2.7 mi) south of Black Creek, and approximately 6.1 km (3.8 mi) southeast of the community of Brooklyn, Mississippi, at the Perry County line.

Unit 9 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of a pond and associated uplands that have been selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains elements of features essential to the conservation of the species, a potential breeding pond and the surrounding uplands, that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Most of Unit 9 is being actively managed by the USFS to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the potential risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 9, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 10: Perry County, Mississippi

Unit 10 encompasses 182 ha (450 ac) on Federal land and private land in Perry County, Mississippi. The majority of this unit (135 ha (334 ac) is located on the DeSoto National Forest and the remaining balance (47 ha (116 ac)) is located on private land. This unit is located at the intersection of Benndale Road and Mars Hill Road, approximately 2.6 km (1.6 mi) northwest of the intersection of the Perry County, Stone County, and George

County lines and approximately 7.2 km (4.5 mi) north of State Hwy. 26.

Unit 10 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of two ponds and their associated uplands that have been selected as future Mississippi gopher frog translocation sites during ongoing recovery initiatives. It provides the potential for establishing new breeding ponds and metapopulation structure that will protect the Mississippi gopher frog from extinction. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains elements of features essential to the conservation of the species, two potential breeding ponds and their surrounding uplands, that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Most of Unit 10 is being actively managed by the USFS to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at high risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 10, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 11: Perry County, Mississippi

Unit 11 encompasses 133 ha (329 ac) on Federal land and private land in Perry County, Mississippi. The majority of this unit (129 ha (319 ac)) is located on the DeSoto National Forest and the remaining balance (4 ha (10 ac)) is located on private land. This unit borders the north side of Benndale Road northeast of the intersection of the Perry County, Stone County, and George County lines, approximately 6.4 km (4 mi) north of State Hwy. 26.

Unit 11 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of a pond and associated uplands that have been selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, a potential breeding pond and the surrounding uplands, that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Most of Unit 11 is being actively managed by the USFS to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area as suitable habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the potential risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 11, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Unit 12: Perry County, Mississippi

Unit 12 encompasses 133 ha (329 ac) on Federal land and private land in Perry County, Mississippi. The majority of this unit (125 ha (309 ac)) is located on the DeSoto National Forest and the remaining balance (8 ha (20 ac)) is located on private land. This unit is located approximately 1.2 km (0.75 mi) east of Mars Hill Road, approximately 3.9 km (2.4 mi) north of the intersection of the Perry County, Stone County, and George County lines, and approximately 10.2 km (6.4 mi) north of State Hwy. 26.

Unit 12 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of a pond and its associated uplands that have been selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. We believe this area is essential for the conservation of the Mississippi gopher frog because it contains elements of features essential to the conservation of the species, a potential breeding pond and the surrounding uplands, that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Most of Unit 12 is being actively managed by the USFS to benefit the recovery of the Mississippi gopher frog. Due to the low number of remaining populations and severely restricted range of the Mississippi gopher frog, the species may be at risk of extirpation from stochastic events such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species and provide for the species' eventual recovery. This unit is proposed as critical habitat because it is essential for the conservation of the species.

Within Unit 12, threats to elements of the essential physical and biological features of habitat for the Mississippi gopher frog are: fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and agricultural and urban development.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the

destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

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

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

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

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the Mississippi gopher frog. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Mississippi gopher frog. These activities include, but are not limited to:

(1) Actions that would alter the hydrology or water quality of Mississippi gopher frog wetland habitats. Such activities could include, but are not limited to, discharge of fill material; release of chemicals and/or biological pollutants; clearcutting, draining, ditching, grading, or bedding; diversion or alteration of surface or ground water flow into or out of a wetland (*i.e.,* due to roads, fire breaks, impoundments, discharge pipes, etc.); discharge or dumping of toxic chemicals, silt, or other pollutants (*i.e.,* sewage, oil, pesticides, and gasoline); and use of vehicles within wetlands. These activities could destroy Mississippi gopher frog breeding sites, reduce the hydrological regime necessary for successful larval metamorphosis, and/or eliminate or reduce the habitat necessary for the growth and reproduction, and affect the prey base, of the Mississippi gopher frog.

(2) Forestry management actions in pine habitat that would significantly alter the suitability of Mississippi gopher frog terrestrial habitat. Such activities could include, but are not limited to, conversion of timber land to another use; timber management including clearcutting, site preparation involving ground disturbance, prescribed burning, and unlawful pesticide application. These activities could destroy or alter the uplands necessary for the growth and development of juvenile and adult Mississippi gopher frogs.

(3) Actions that would significantly fragment and isolate Mississippi gopher frog wetland and upland habitats from each other. Such activities could include, but are not limited to, constructing new structures or new roads and converting forested habitat to other uses. These activities could limit or prevent the dispersal of Mississippi gopher frogs from breeding sites to upland habitat or vice versa due to obstructions to movement caused by structures, certain types of curbs, increased traffic density, or inhospitable habitat.

Exemptions

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

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a)

required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

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

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation. Therefore, we are not proposing exemption of any lands owned or managed by the Department of Defense from this designation of critical habitat for the Mississippi gopher frog.

Exclusions

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

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the impacts of designation.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we have prepared a draft economic analysis (DEA) concerning this proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**). This DEA was specifically drafted for this revised proposed designation of critical habitat for the Mississippi gopher frog. It represents a revision of the previous DEA announced in the **Federal Register** on June 1, 2010 (75 FR 77817).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with this proposed critical habitat designation for the Mississippi gopher frog. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the Mississippi gopher frog (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (*i.e.,* incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the DEA.

The DEA describes incremental economic impacts associated with Unit 1 in St. Tammany Parish, Louisiana, using three different scenarios. This approach was taken because most of the estimated incremental impacts are related to the lost development value in Unit 1, considerable uncertainty existed regarding the likelihood of a Federal nexus for development activities there, and potential existed for the Service to recommend conservation measures if consultation were to occur. Scenario 1 assumes the proposed development within Unit 1 would avoid impacts to jurisdictional wetlands and, as a result, there would be no Federal nexus (no Federal permit required) triggering section 7 consultation regarding gopher frog critical habitat. Scenario 2 assumes the proposed development within Unit 1 would impact jurisdictional wetlands and a U.S. Army Corps of Engineers (Corps) Clean Water Act Section 404 permit (permit) would be required, thus triggering section 7 consultation regarding gopher frog critical habitat. This scenario assumed that the Service would work with the landowner to establish conservation areas for the gopher frog that would result in management of 60 percent of the area for gopher frog conservation and recovery. Scenario 3 is similar to Scenario 2 in that it assumes the proposed development within Unit 1 would impact jurisdictional wetlands

and a Corps permit would be required, thus triggering section 7 consultation regarding gopher frog critical habitat. However, in this scenario, the assumption was made that due to the importance of Unit 1 to the conservation and recovery of the species, the Service would recommend no development within the unit during consultation. The DEA cost estimates for each scenario were broken down into the following categories: (1) Costs associated with economic activities, including development and forestry; (2) costs associated with military activities; and (3) costs associated with active species management.

Applying a seven percent discount rate, the DEA estimates that over the next 20 years the total incremental impacts of conservation activities for the Mississippi gopher frog using Scenario 1 would be $102,000 ($9,610 in annualized impacts); using Scenario 2, it would be $21.8 million ($2.06 million in annualized impacts); and using Scenario 3, it would be $36.3 million ($3.43 million in annualized impacts). The broad range in cost estimates stems primarily from uncertainty regarding the likelihood of a Federal nexus for development activities in Unit 1, and the conservation measures that the Service may recommend if consultation does occur. All economic impacts stem from the administrative cost of addressing adverse modification of critical habitat during section 7 consultations. Incremental impacts stemming from additional gopher frog conservation measures requested by the Service during section 7 consultation are not expected in occupied areas because project modifications that may be needed to minimize impacts to the species would coincidentally minimize impacts to critical habitat. In unoccupied areas, project modifications resulting from consultation would be considered incremental impacts of the critical habitat designation.

The DEA also discusses the potential economic benefits associated with the designation of critical habitat. However, because the Service believes that the direct benefits of the designation are best expressed in biological terms, this analysis does not quantify or monetize benefits; only a qualitative discussion of economic benefits is provided.

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. The Mississippi Army National Guard conducts training in an area of the DeSoto National Forest where Units 10, 11, and 12 are located. This training is authorized by a Special Use Permit with the USFS and the lands covered by the permit are open to the public for all lawful purposes. The USFS manages this property as part of a Habitat Management Area for red-cockaded woodpeckers and, as a result, there are certain limitations to training activities in this area. In preparing this proposal, we have determined that lands within the proposed designation of critical habitat for the Mississippi gopher frog are not owned or managed by the Department of Defense. Additionally, we anticipate no impact to national security because training limitations are already in place for the endangered red-cockaded woodpecker. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts to national security. However, we did receive a request to exclude this area during the comment period for the previously published proposed rule. Therefore, if anyone has information on why this property, or any property owned or managed by Department of Defense, should be excluded under Section 4(b)(2) of the Act we encourage the submission of comments as described above under the Public Comments section of this proposed rule.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposed rule, we have determined that there are currently no HCPs or other management plans for the Mississippi gopher frog, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule, as well as those comments received during the comment period for the previous proposed rule, during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations—Amended

In our June 3, 2010, proposed rule (75 FR 31387), we indicated that we would defer our determination of compliance with several statutes until our draft economic analysis was available. In this revision of the proposed designation of critical habitat for Mississippi gopher frog, we have made use of the

information in our draft economic analysis in making our determination that this proposed rule is in compliance with the statutes and Executive Orders detailed below.

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive during the open comment period, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the Mississippi gopher frog would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as timber operations, and residential and commercial development, along with the accompanying infrastructure associated with such projects, including road, storm water drainage, and bridge and culvert construction and maintenance. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where the Mississippi gopher frog is present, Federal agencies are already required to consult with us under section 7 of the Act, due to the endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the same consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Mississippi gopher frog. The Service and the action agency are the only entities with direct compliance costs associated with this proposed critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is, therefore, possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the gopher frog. The DEA indicates that the incremental impacts potentially incurred by small entities are limited to development activities on Tradition Properties in Subunits 2a and 2b (where 10 acres of proposed critical habitat overlap a planning area for a large-scale development), and potential future development within 1,649-acre Unit 1 owned by four small businesses and an individual. The five small businesses, considered small Land Subdividers, represent approximately 3.9 percent of the total (129 small businesses in this sector) small Land Subdividers within the counties containing proposed critical habitat for the Mississippi gopher frog. Incremental costs of gopher frog critical habitat to Tradition Properties are anticipated to result in an annualized impact of $127 (which would represent less than 0.01 percent of Tradition Properties' average annual revenues). Annualized impacts to the four small businesses in Unit 1were evaluated according to the three Scenarios described above in the *Draft Economic Analysis* section. Under Scenario 1, there would be no impact to small businesses. Under Scenario 2, an impact of $2.05 million was calculated, approximately 28.6 percent of annual revenues; under Scenario 3, an impact of $3.43 million was calculated, approximately 47.8 percent of annual revenues.

Our analysis constitutes an evaluation of not only potentially directly affected parties, but those also potentially indirectly affected. Under the RFA and following recent case law, we are only required to evaluate the direct effects of a regulation to determine compliance. Since the regulatory effect of critical habitat is through section 7 of the Act which applies only to Federal agencies, we have determined that only Federal agencies are directly affected by this rulemaking. Other entities, such as small businesses, are only indirectly affected. However, to better understand

the potential effects of a designation of critical habitat, we frequently evaluate the potential impact to those entities that may be indirectly affected, as was the case for this rulemaking. In doing so, we focus on the specific areas being designated as critical habitat and compare the number of small business entities potentially affected in that area with other small business entities in the regional area, versus comparing the entities in the area of designation with entities nationally—which is more commonly done. This results in an estimation of a higher proportion of small businesses potentially affected. In this rulemaking, we calculate that the proportion of small businesses potentially affected is 3.9 percent of those regionally. If we were to calculate that value based on the proportion nationally, then our estimate would be significantly lower than 1 percent.

Following our evaluation of potential effects to small business entities from this rulemaking, we do not believe that the 5 small businesses or 3.9 percent of the small businesses in the affected sector represents a substantial number. However, we recognize that the potential effects to these small businesses under Scenarios 2 and 3 may be significant. We will further evaluate the potential effects to these small businesses as we develop our final rulemaking.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not directly have a significant effect on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, as we develop the final rule we will further evaluate the potential indirect effects on this designation on small business entities.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis of areas included in this proposal, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid for Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the Mississippi gopher frog occurs primarily on Federal and privately owned lands. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

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

Federalism—Executive Order 13132

In accordance with E. O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Louisiana and Mississippi. The designation of critical habitat in areas currently occupied by the Mississippi gopher frog imposes no additional restriction to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to

these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the Mississippi gopher frog within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.C.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, (Government-to-Government Relations with Native American Tribal Governments; (59 FR 22951)), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no tribal lands that were occupied by the Mississippi gopher frog at the time of listing that contain the features essential for the conservation of the species, and no tribal lands unoccupied by the Mississippi gopher frog that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Mississippi gopher frog on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this package is Linda LaClaire of the Mississippi Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 75 FR 31387, June 3, 2010, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95(d), revise the entry for ''Mississippi gopher frog'' (*Rana sevosa*) in the same alphabetical order as the species appears in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Mississippi gopher frog *(Rana sevosa)*

(1) Critical habitat units are depicted for St. Tammany Parish, Louisiana, and Forrest, Harrison, Jackson, and Perry Counties in Mississippi, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the Mississippi gopher frog consist of three components:

(i) Primary Constituent Element 1—*Ephemeral wetland habitat.* Breeding ponds, geographically isolated from other waterbodies and embedded in forests historically dominated by longleaf pine communities, that are small (generally <0.4 to 4.0 hectares (<1 to 10 acres), ephemeral, and acidic. Specific conditions necessary in breeding ponds to allow for successful reproduction of Mississippi gopher frogs are:

(A) An open canopy with emergent herbaceous vegetation for egg attachment;

(B) An absence of large, predatory fish that prey on frog larvae;

(C) Water quality such that frogs, their eggs, or larvae are not exposed to pesticides or chemicals and sediment associated with road runoff; and

(D) Surface water that lasts for a minimum of 195 days during the breeding season to allow a sufficient period for larvae to hatch, mature, and metamorphose.

(ii) Primary Constituent Element 2—*Upland forested nonbreeding habitat.* Forests historically dominated by longleaf pine, adjacent and accessible to and from breeding ponds, that is maintained by fires frequent enough to support an open canopy and abundant herbaceous ground cover and gopher tortoise burrows, small mammal burrows, stump holes, or other underground habitat that the Mississippi gopher frog depends upon for food, shelter, and protection from the elements and predation; and

(iii) Primary Constituent Element 3—*Upland connectivity habitat.* Accessible upland habitat between breeding and nonbreeding habitats to allow for Mississippi gopher frog movements between and among such sites. It is characterized by an open canopy and abundant native herbaceous species and subsurface structure which provides shelter for Mississippi gopher frogs during seasonal movements, such as that created by deep litter cover, clumps of grass, or burrows.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Index Map (Map 1) follows:

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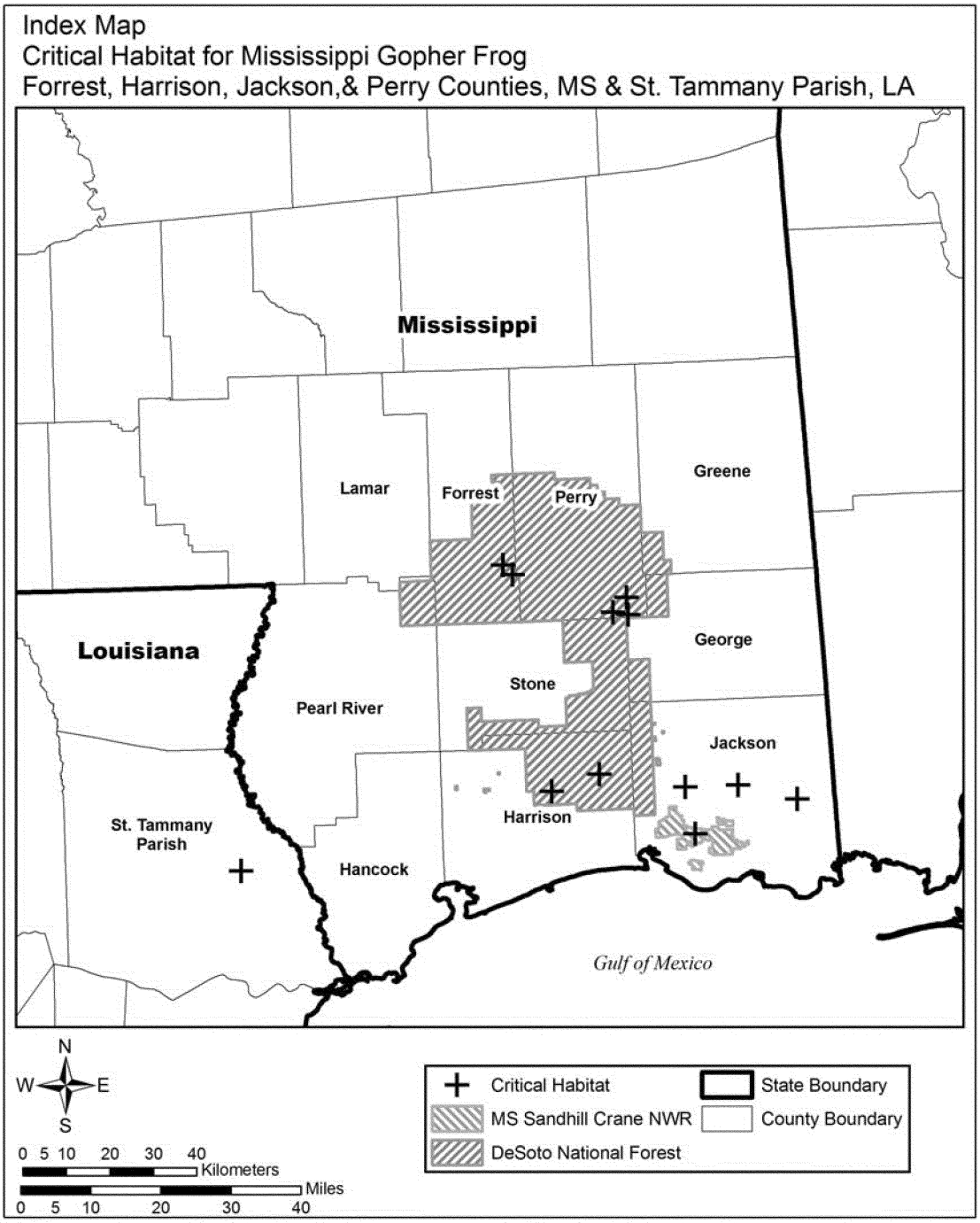
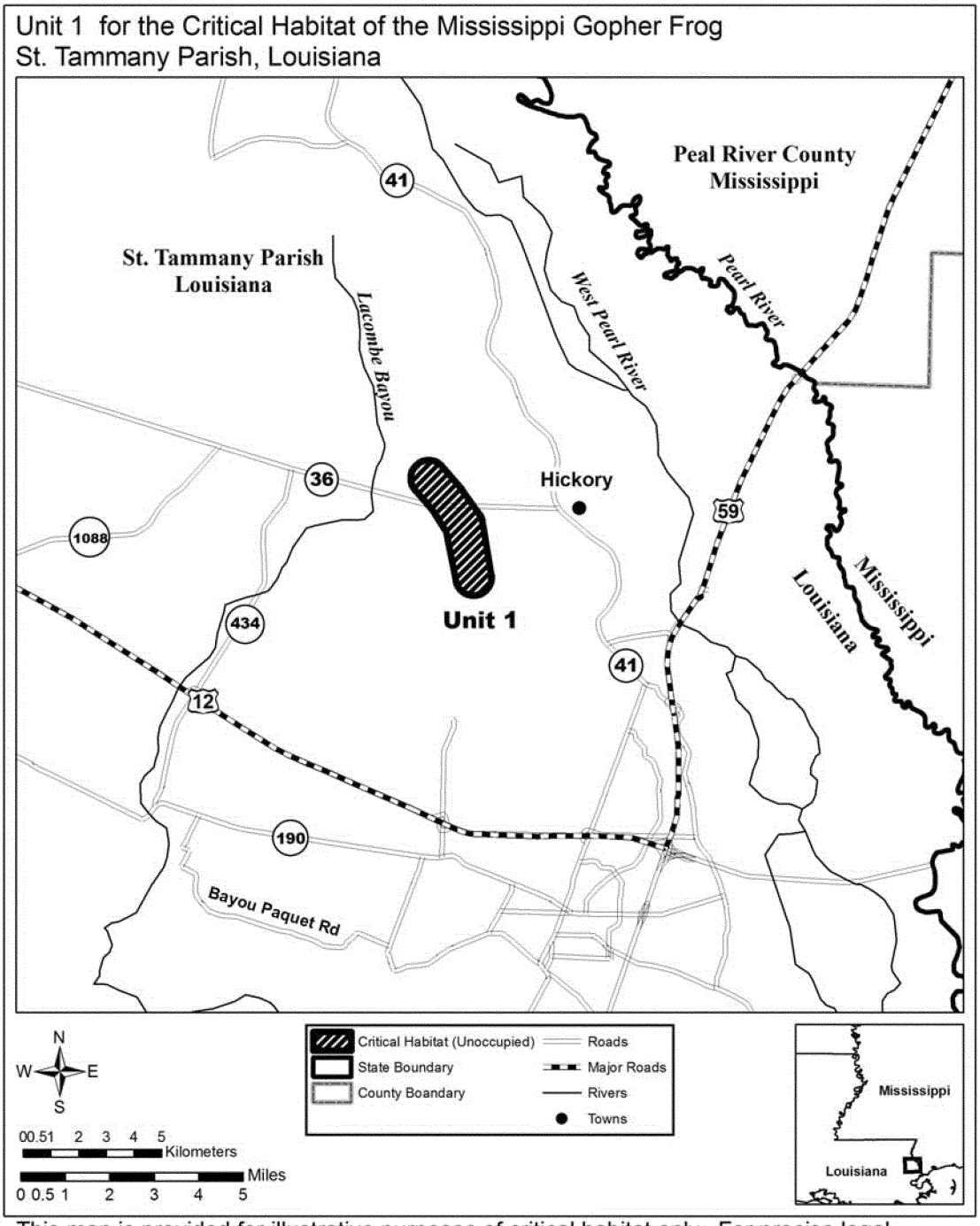


This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(6) Unit 1: St. Tammany Parish, Louisiana

(i) [Reserved for textual description of Unit 1: St. Tammany Parish, Louisiana]

(ii) *Note:* Map of Unit 1: St. Tammany Parish, Louisiana, follows:



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(7) Unit 2: Harrison County, Mississippi.

(i) [Reserved for textual description of Unit 2, Subunit A: Harrison County, Mississippi]

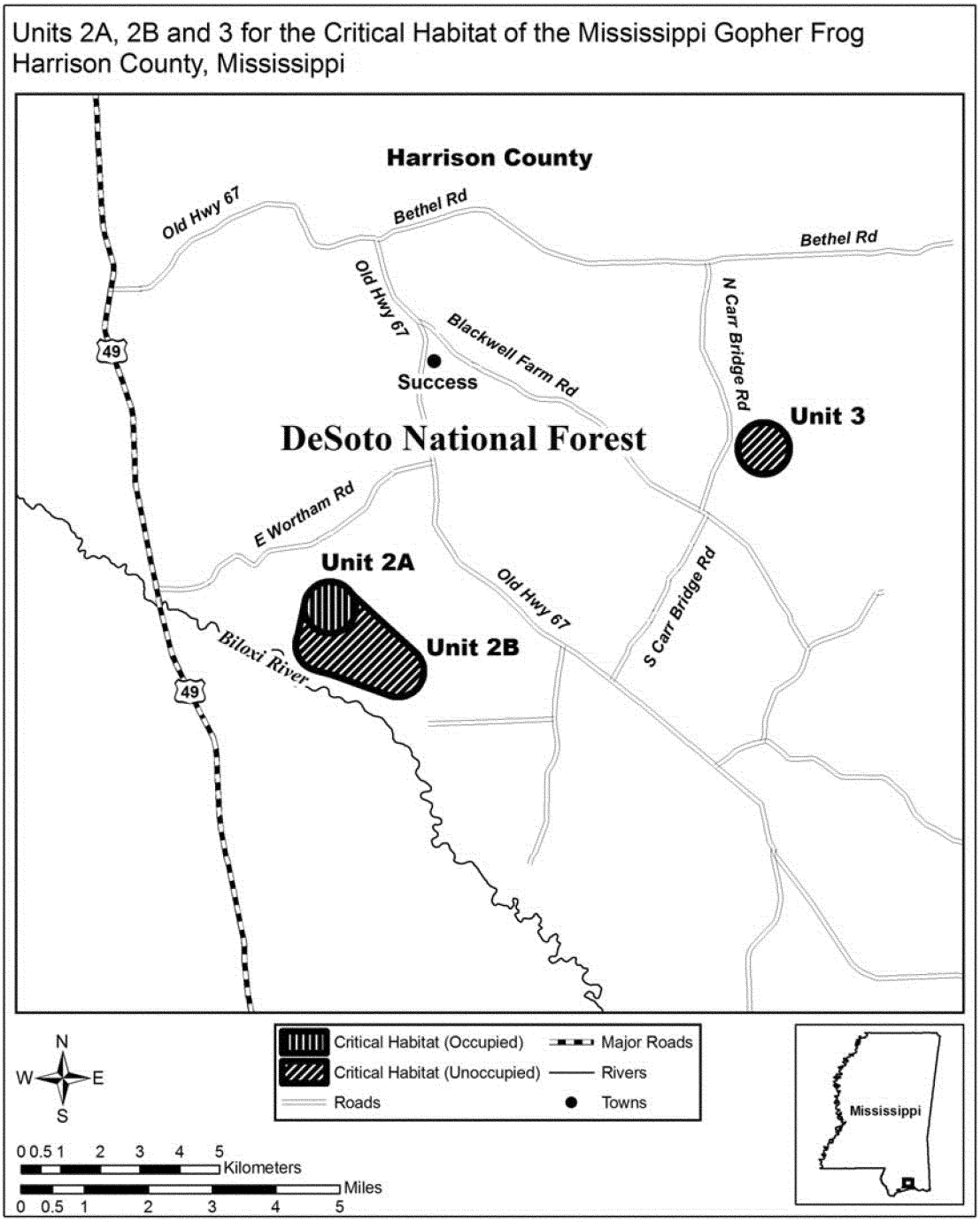
(ii) [Reserved for textual description of Unit 2, Subunit B: Harrison County, Mississippi]

(iii) *Note:* Map depicting Unit 2 is provided at paragraph (8)(ii) of this entry.

(8) Unit 3: Harrison County, Mississippi.

(i) [Reserved for textual description of Unit 3: Harrison County, Mississippi]

(ii) *Note:* Map of Units 2 and 3 follows:



(9) Unit 4: Jackson County, Mississippi.

(i) [Reserved for textual description of Unit 4, Subunit A: Jackson County, Mississippi]

(ii) [Reserved for textual description of Unit 4, Subunit B: Jackson County, Mississippi]

(iii) *Note:* Map depicting Unit 4 is provided at paragraph (11)(ii) of this entry.

(10) Unit 5: Jackson County, Mississippi.

(i) [Reserved for textual description of Unit5, Subunit A: Jackson County, Mississippi]

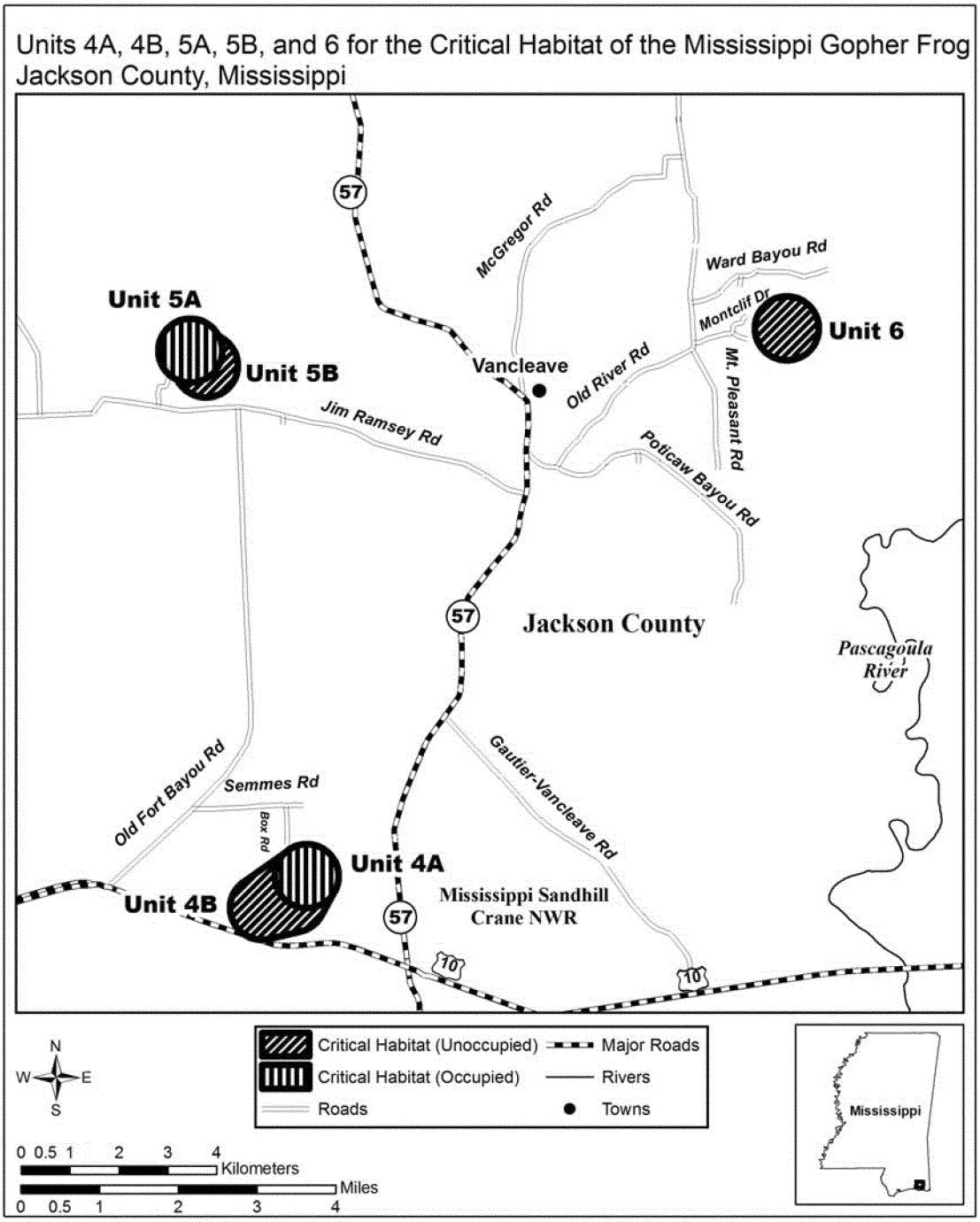
(ii) [Reserved for textual description of Unit5, Subunit B: Jackson County, Mississippi]

(iii) *Note:* Map depicting Unit 5 is provided at paragraph (11)(ii) of this entry.

(11) Unit 6: Jackson County, Mississippi.

(i) [Reserved for textual description of Unit 6: Jackson County, Mississippi]

(ii) *Note:* Map of Unit 4: Jackson County, Mississippi; Unit 5: Jackson County, Mississippi; and Unit 6: Jackson County, Mississippi follows:

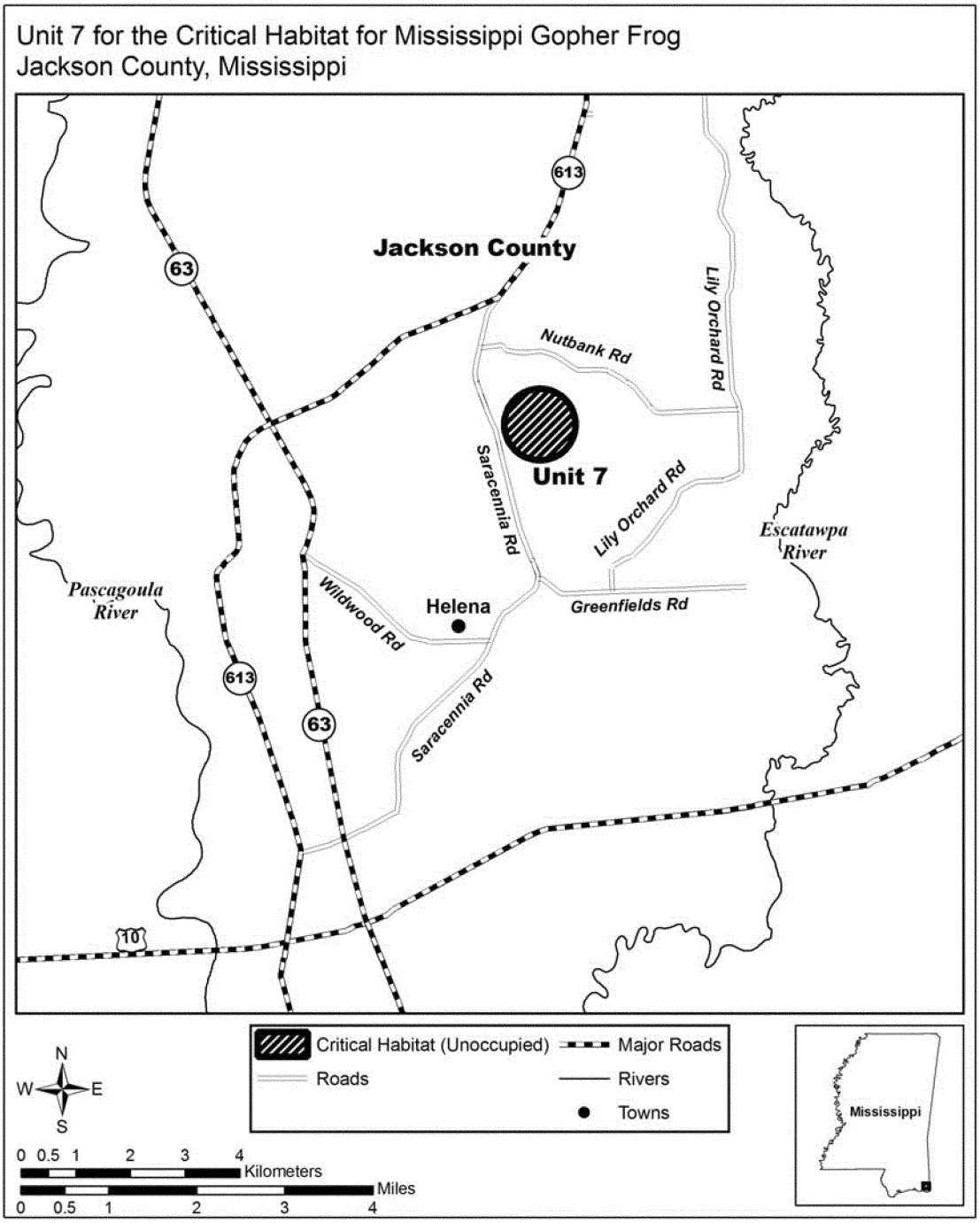


This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(12) Unit 7: Jackson County, Mississippi.

(i) [Reserved for textual description of Unit 7: Jackson County, Mississippi]

(ii) *Note:* Map of Unit 7: Jackson County, Mississippi follows:



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(13) Unit 8: Forrest County, Mississippi.

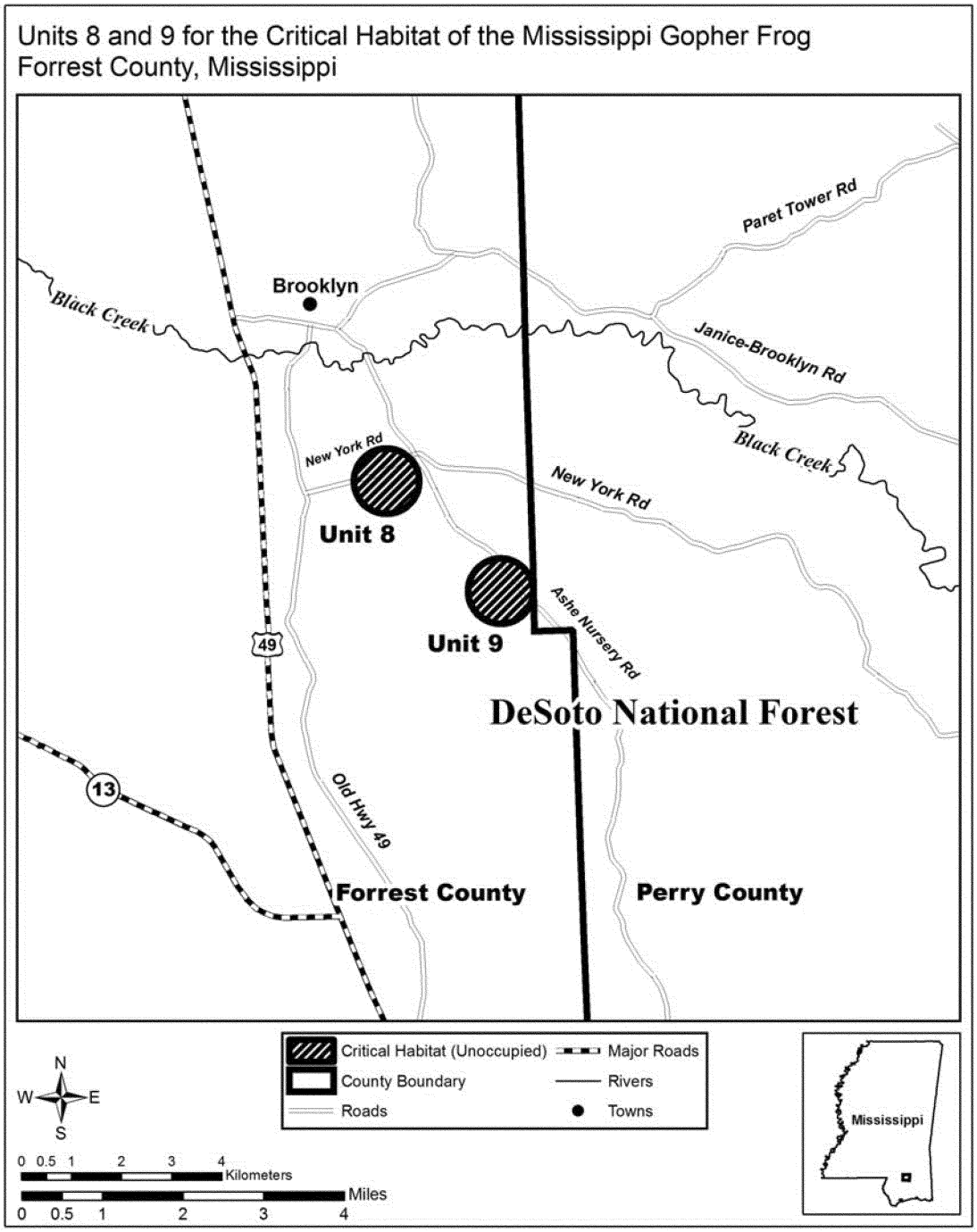
(i) [Reserved for textual description of Unit 8: Forrest County, Mississippi]

(ii) *Note:* Map depicting Unit 8 is provided at paragraph (14)(ii) of this entry.

(14) Unit 9: Forrest County, Mississippi.

(i) [Reserved for textual description of Unit 9: Forrest County, Mississippi]

(ii) *Note:* Map of Unit 8: Forrest County, Mississippi and Unit 9: Forrest County, Mississippi follows:



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(15) Unit 10: Perry County, Mississippi.

(i) [Reserved for textual description of Unit 10: Perry County, Mississippi]

(ii) *Note:* Map depicting Unit 10 is provided at paragraph (17)(ii) of this entry.

(16) Unit 11: Perry County, Mississippi.

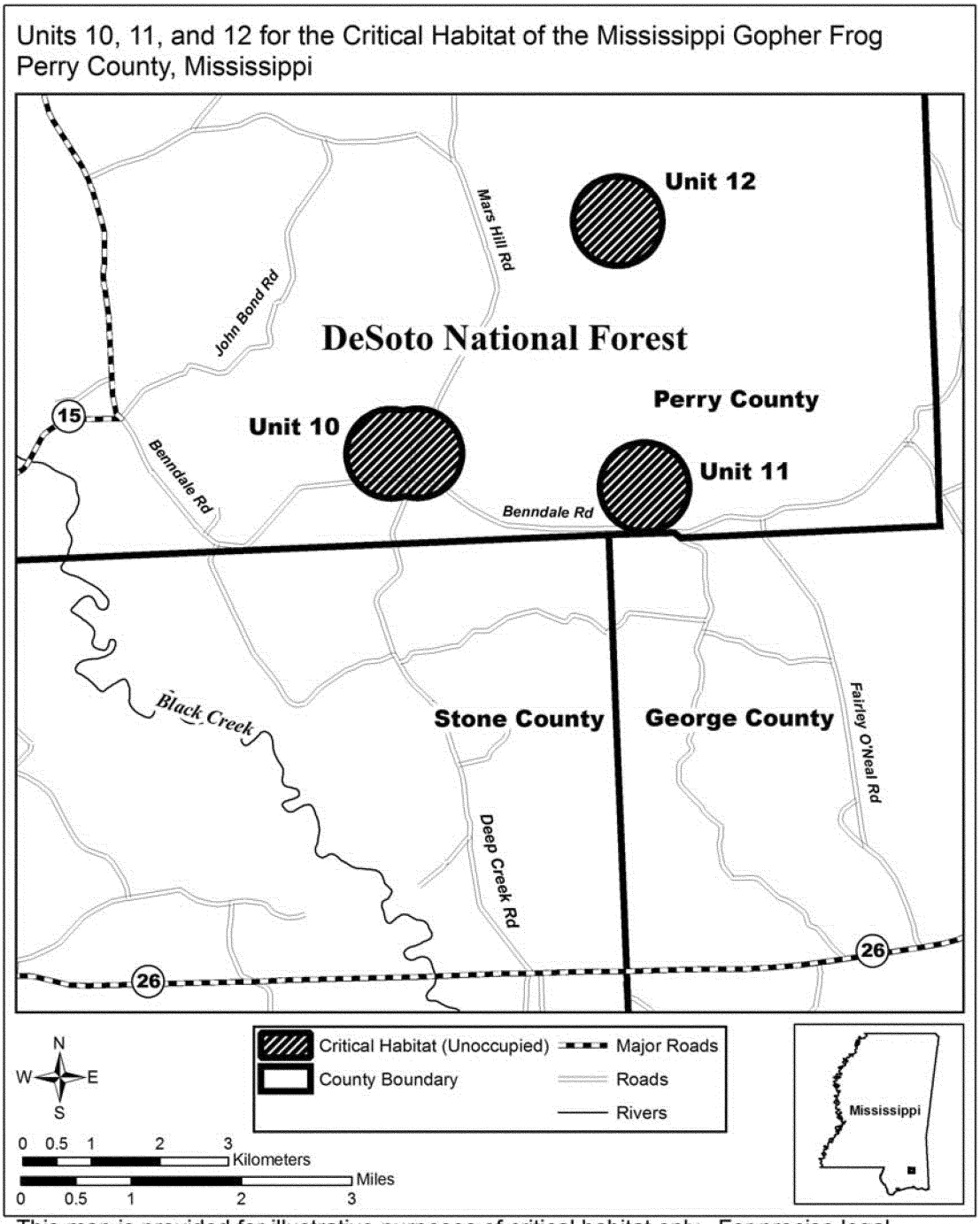
(i) [Reserved for textual description of Unit 11: Perry County, Mississippi]

(ii) *Note:* Map depicting Unit 11 is provided at paragraph (17)(ii) of this entry.

(17) Unit 12: Perry County, Mississippi.

(i) [Reserved for textual description of Unit 12: Perry County, Mississippi]

(ii) *Note:* Map of Unit 10, Perry County, Mississippi; Unit 11, Perry County, Mississippi; and Unit 12, Perry County, Mississippi follows:



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Dated: September 12, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–24046 Filed 9–26–11; 8:45 am]

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FEDERAL REGISTER

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Part III

Federal Trade Commission

16 CFR Part 312

Children's Online Privacy Protection Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB20

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Proposed rule; request for comment.

SUMMARY: The Commission proposes to amend the Children's Online Privacy Protection Rule (''COPPA Rule'' or ''Rule''), consistent with the requirements of the Children's Online Privacy Protection Act to respond to changes in online technology, including in the mobile marketplace, and, where appropriate, to streamline the Rule. After extensive consideration of public input, the Commission proposes to modify certain of the Rule's definitions, and to update the requirements set forth in the notice, parental consent, confidentiality and security, and safe harbor provisions. In addition, the Commission proposes adding a new provision addressing data retention and deletion.

DATES: Written comments must be received on or before November 28, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule Review, 16 CFR Part 312, Project No. P104503'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/2011copparulereview,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, write ''COPPA Rule Review, 16 CFR Part 312, Project No. P104503'' on your comment, and mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex E), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Marcus or Mamie Kresses, Attorneys, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2854, or (202) 326–2070.

SUPPLEMENTARY INFORMATION:

I. Background

The COPPA Rule, 16 CFR part 312, issued pursuant to the Children's Online Privacy Protection Act (''COPPA'' or ''COPPA statute''), 15 U.S.C. 6501 *et seq.,* became effective on April 21, 2000. The Rule imposes certain requirements on operators of Web sites or online services directed to children under 13 years of age, and on operators of other Web sites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, ''operators''). Among other things, the Rule requires that operators provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.[1] The Rule also requires operators to keep secure the information they collect from children and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities.[2] The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[3]

The Commission initiated a review of the Rule on April 21, 2005, pursuant to Section 6507 of the COPPA statute, which required the Commission to conduct a review within five years of the Rule's effective date.[4] After considering extensive public comment, the Commission determined in March 2006 to retain the Rule without change.[5]

The Commission remains deeply committed to helping to create a safer, more secure online experience for children and takes seriously the challenge to ensure that COPPA continues to meet its originally stated goals, even as online technologies, and children's uses of such technologies, evolve. In light of the rapid-fire pace of technological change since the Commission's 2005 review, including an explosion in children's use of mobile devices, the proliferation of online social networking and interactive gaming, the Commission initiated review of the COPPA Rule in April 2010 on an accelerated schedule.[6]

On April 5, 2010, the Commission published a document in the **Federal Register** seeking public comment on whether technological changes to the online environment over the preceding five years warranted any changes to the Rule.[7] The Commission's request for public comment examined each aspect of the COPPA Rule, posing 28 questions for the public's consideration.[8] The Commission identified several areas where public comment would be especially useful, including examination of whether: The Rule's existing definitions are sufficiently clear and comprehensive, or warrant modification or expansion, consistent with the COPPA statute; additional technological methods to obtain verifiable parental consent should be added to the COPPA Rule, and whether any of the consent methods currently included should be removed; whether the Rule provisions on protecting the confidentiality and security of personal information are sufficiently clear and comprehensive; and the Rule's criteria and process for Commission approval and oversight of safe harbor programs should be modified in any way. The comment period closed on July 12, 2010. During the comment period, on June 2, 2010, the Commission held a public roundtable to discuss in detail several of the areas where public comment was sought, including the application of COPPA's definitions of ''Internet,'' ''website,'' and ''online service'' to new devices and technologies, the COPPA statute's actual knowledge standard for general audience Web sites and online services, the definition of ''personal information,'' emerging parental consent mechanisms, and COPPA's exceptions to prior parental consent.[9]

In addition to the dialogue at the public roundtable, the Commission received 70 comments from industry representatives, advocacy groups, academics, technologists, and individual members of the public in response to the April 5, 2010 request for public comment.[10] The comments

[1] *See* Children's Online Privacy Protection Rule, 16 CFR 312.3.

[2] *See* 16 CFR 312.7 and 312.8.

[3] *See* 16 CFR 312.10; Children's Online Privacy Protection Rule, 64 FR 59888, 59906, 59908, 59915 (Nov. 3, 1999), *available at http://www.ftc.gov/os/1999/10/64Fr59888.pdf.*

[4] *See* 15 U.S.C. 6507; 16 CFR 312.11.

[5] *See* Children's Online Privacy Protection Rule, 71 FR 13247 (Mar. 15, 2006) (retention of rule without modification).

[6] The Commission generally reviews each of its trade regulation rules approximately every ten years. Under this schedule, the next COPPA Rule review was originally set for 2017.

[7] *See* Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule (''2010 Rule Review''), 75 FR 17089 (Apr. 5, 2010).

[8] *Id.*

[9] Information about the June 2, 2010 COPPA Roundtable is located at *http://www.ftc.gov/bcp/workshops/coppa/index.shtml.*

[10] Public comments in response to the Commission's April 5, 2010 **Federal Register**

addressed the efficacy of the Rule generally, and several possible areas for change.

II. COPPA's Definition of ''Child''

The COPPA statute, and by extension, the COPPA Rule, defines as a child ''an individual under the age of 13.'' [11] A few commenters suggested that COPPA's protections be broadened to cover a range of adolescents over age 12 and urged the Commission to seek a statutory change from Congress.[12] By contrast, the majority of commenters who addressed this issue expressed concern that expanding COPPA's coverage to teenagers would raise a number of constitutional, privacy, and practical issues.[13]

Recognizing the difficulties of extending COPPA to children ages 13 or older, at least one commenter, the Institute for Public Representation, proposed the need for alternative privacy protections for teenagers. This commenter, while not proposing a statutory change to the definition of ''child,'' called on the Commission to develop a set of privacy protections for teens, consistent with the Fair Information Practices Principles created by the Organization for Economic Cooperation and Development, that would require understandable notices, limited information collection, an opt-in consent process, and access and control rights to data collected from them.[14]

In the course of drafting COPPA, Congress looked closely at whether adolescents should be covered by the law. Congress initially considered a requirement that operators make reasonable efforts to provide parents with notice and an opportunity to prevent or curtail the collection or use of personal information collected from children over the age of 12 and under the age of 17.[15] Ultimately, however, Congress decided to define a ''child'' as an individual under age 13.[16] The Commission supported this assessment at the time, based in part on the view that young children under age 13 do not possess the level of knowledge or judgment to make appropriate determinations about when and if to divulge personal information over the Internet.[17] The Commission continues to believe that the statutory definition of a child remains appropriate.[18]

Although teens face particular privacy challenges online,[19] COPPA's parental notice and consent approach is not designed to address such issues. COPPA's parental notice and consent model works fairly well for young children, but the Commission continues to believe that it would be less effective or appropriate for adolescents.[20] COPPA relies on children providing operators with parental contact information at the outset to initiate the consent process. The COPPA model would be difficult to implement for teenagers, as many would be less likely than young children to provide their parents' contact information, and more likely to falsify this information or lie about their ages in order to participate in online activities. In addition, courts have recognized that as children age, they have an increased constitutional right to access information and express themselves publicly.[21] Finally, given that adolescents are more likely than young children to spend a greater proportion of their time on Web sites and online services that also appeal to adults, the practical difficulties in expanding COPPA's reach to adolescents might unintentionally burden the right of adults to engage in online speech.[22] For all of these reasons, the Commission declines to advocate for a change to the statutory definition of ''child.''

Although the Commission does not recommend that Congress expand COPPA to cover teenagers, the Commission believes that it is essential that teens, like adults, be provided with clear information about uses of their data and be given meaningful choices about such uses. Therefore, the Commission is exploring new privacy approaches that will ensure that teens—and adults—benefit from stronger privacy protections than are currently generally available.[23]

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document are located at *http://www.ftc.gov/os/comments/copparulerev2010/index.shtm.* Comments have been numbered based upon alphabetical order. Comments are cited herein identified by commenter name, comment number, and, where applicable, page number.

[11] *See* 15 U.S.C. 6502(1).

[12] *See* Andrew Bergen (comment 4); Common Sense Media (comment 12).

[13] *See* Sharon Anderson (comment 2); Kevin Brook (comment 6); Center for Democracy and Technology (''CDT'') (comment 8), at 5; CTIA (comment 14), at 10; Facebook (comment 22), at 2; Elatia Grimshaw (comment 26); Interactive Advertising Bureau (''IAB'') (comment 34), at 6–7; Harold Levy (comment 37); Motion Picture Association of America (''MPAA'') (comment 42), at 4; National Cable & Television Association (comment 44), at 5 n.16; NetChoice (comment 45), at 2; Promotion Marketing Association (''PMA'') (comment 51), at 5; Berin Szoka (comment 59), at 6; Toy Industry Association of America (comment 63), at 5. Five commenters urged the Commission to consider lowering or eliminating COPPA's age to permit younger children access to a variety of educational online offerings. *See* Eric MacDonald (comment 38); Mark Moran (comment 41); Steingreaber (comment 58); Karla Talbot (comment 60); Daniel Widrew (comment 67).

[14] *See* Institute for Public Representation (comment 33), at 42.

[15] *See Children's Online Privacy Protection Act of 1998,* S. 2326, 105th Cong. § 3(a)(2)(iii) (1998).

[16] *See* 15 U.S.C. 6502.

[17] *See Protection of Children's Privacy on the World Wide Web: Hearing on S. 2326 Before the Subcomm. on Communications of the S. Comm. on Commerce, Science & Transportation,* 105th Cong. (1998), at 5 (Statement of Robert Pitofsky, Chairman, Federal Trade Commission), *available at http://www.ftc.gov/os/1998/09/priva998.htm* (''Children are not fully capable of understanding the consequences of divulging personal information online.'').

[18] *See Protecting Youths in an Online World: Hearing Before the Subcomm. on Consumer Protection, Product Safety, and Insurance of the S. Comm. on Commerce, Science & Transportation,* 111th Cong. 14–15 (2010) (Statement of Jessica Rich, Deputy Director, Bureau of Consumer Protection, Federal Trade Commission), *available at http://www.ftc.gov/os/testimony/100715toopatestimony.pdf.*

[19] For example, research shows that teens tend to be more impulsive than adults and that they may not think as clearly as adults about the consequences of what they do. *See, e.g.,* Transcript of Exploring Privacy, A Roundtable Series (Mar. 17, 2010), Panel 3: Addressing Sensitive Information, available at *http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/031710_sess3.pdf;* Chris Hoofnagle, Jennifer King, Su Li, and Joseph Turow, *How Different Are Young Adults from Older Adults When It Comes to Information Privacy Attitudes & Policies?* (April 14, 2010), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1589864.* As a result, they may voluntarily disclose more information online than they should. On social networking sites, young people may share personal details that leave them vulnerable to identity theft. *See* Javelin Strategy and Research, 2010 *Identity Fraud Survey Report* (Feb. 2010), available at *https://www.javelinstrategy.com/uploads/files/1004.R_2010IdentityFraudSurveyConsumer.pdf.* They may also share details that could adversely affect their potential employment or college admissions. *See e.g.,* Commonsense Media, *Is Social Networking Changing Childhood? A National Poll* (Aug. 10, 2009), available at *http://www.commonsensemedia.org/teen-social-media* (indicating that 28 percent of teens have shared personal information online that they would not normally share publicly).

[20] *Id.*

[21] *See, e.g., American Amusement Mach. Ass'n* v. *Kendrick,* 244 F.3d 572 (7th Cir. 2001) (citing *Erznoznik* v. *City of Jacksonville,* 422 U.S. 205, 212–14 (1975)); *Tinker* v. *Des Moines Indep. Sch. Dist.,* 393 U.S. 503, 511–14 (1969).

[22] *See ACLU* v. *Ashcroft,* 534 F.3d 181, 196 (3d Cir. 2008) (citing *ACLU* v. *Gonzales,* 478 F. Supp. 2d 775, 806 (E.D. Pa. 2007) (''Requiring users to go through an age verification process would lead to a distinct loss of personal privacy.''); *see also Bolger* v. *Youngs Drug Prods. Corp.,* 463 U.S. 60, 73 (1983) (citing *Butler* v. *Michigan,* 352 U.S. 380, 383 (1957) (''The Government may not reduce the adult population * * * to reading only what is fit for children.''). *See also* Berin Szoka (comment 59), at 6.

[23] *See A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers,* 36–36 (Dec. 1, 2010), available at *http://www.ftc.gov/os/2010/12/101201privacyreport.pdf; Protecting Youths in an Online World, supra* note 18, at 14–15 (''The FTC believes that its upcoming privacy recommendations based on its roundtable discussions will greatly benefit teens. The Commission expects that the privacy proposals emerging from this initiative will provide teens both a greater understanding of how their data is used and a greater ability to control such data.'').

III. COPPA's ''Actual Knowledge'' Standard

The COPPA statute applies to two types of operators: (1) Those who operate Web sites or online services directed to children and collect personal information, and (2) those who have *actual knowledge* that they are collecting personal information from a child under age 13.[24] The second prong, commonly known as ''the actual knowledge standard,'' holds operators of Web sites directed to teenagers, adults, or to a general audience, liable for providing COPPA's protections *only* when they know they are collecting personal information from a COPPA-covered child (*i.e.,* one under age 13). COPPA therefore was never intended to apply to the entire Internet, but rather to a subset of Web sites and online services.[25]

Congress did not define the term ''actual knowledge'' in the COPPA statute, nor did the Commission define the term in the Rule. The case law makes clear that actual knowledge does not equate to ''knowledge fairly implied by the circumstances''; nor is actual knowledge ''constructive knowledge,'' as that term is interpreted and applied legally.[26] Therefore, the Commission has advised that operators of general audience Web sites are not required to investigate the ages of their users.[27] By contrast, however, operators that ask for—or otherwise collect—information establishing that a user is under the age of 13 trigger COPPA's verifiable parental consent and all other requirements.[28]

In general, commenters to the Rule review expressed widespread support for Congress's retention of the statutory actual knowledge standard. Supporters find that the standard provides necessary certainty regarding the boundaries of operators' legal liability for COPPA violations.[29] Commenters generally felt strongly that a lesser standard, *e.g.,* constructive or implied knowledge, would cause extreme uncertainty for operators of general audience Web sites or online services seeking to comply with the law since they would be obliged either to make guesses about the presence of underage children or to deny access to a wide swath of participants, not only young children.[30] According to commenters, such actions would result in greater data collection from all users, including children, in order to determine who should receive COPPA protections (or, alternatively, be denied access to a site). Commenters viewed this result as contradictory to COPPA's goal of minimizing data collection.[31]

A handful of commenters argued for a different standard. One commenter urged the Commission to require commercial Web site operators to make reasonable efforts to determine if a child is registering online, taking into consideration available technology.[32] According to this commenter, Web site operators otherwise face minimal legal risk and business incentive to proactively institute privacy protections for children online. Other commenters, such as the Institute for Public Representation and Microsoft, urged the Commission to adopt clearer guidance on when an operator will be considered to have obtained actual knowledge that it has collected personal information from a child.[33]

Despite the limitations of the actual knowledge standard, the Commission is persuaded that this remains the correct standard to be applied to operators of Web sites and online services that are not directed to children. Accordingly, the Commission does not advocate that Congress amend the COPPA statute's actual knowledge requirement at this time. Actual knowledge is far more workable, and provides greater certainty, than other legal standards that might be applied to the universe of general audience Web sites and online services. This is because the actual knowledge standard is triggered only at the point at which an operator becomes aware of a child's age. By contrast, imposing a lesser ''reasonable efforts'' or ''constructive knowledge'' standard might require operators to ferret through a host of circumstantial information to determine who may or may not be a child.

As described in detail below, with this Notice of Proposed Rulemaking, the Commission is proposing several modifications to the Rule's definition of ''personal information.'' [34] Were the

[24] *See* 15 U.S.C. 6503(a)(1).

[25] *See* MPAA (comment 42), at 10 (''Congress deliberately selected the actual knowledge standard because it served the objective of protecting young children without constraining appropriate data collection and use by operators of general audience Web sites. This standard was selected to serve the goals of COPPA without imposing excessive burdens—including burdens that could easily constrain innovation—on general audience sites and online services'').

[26] The original scope of COPPA, as indicated in S. 2326 and H.R. 4667, would have applied to any commercial Web site or online service used by an operator to ''knowingly'' collect information from children. *See Children's Online Privacy Protection Act of 1998,* S. 2326, 105th Cong. § 2(11)(A)(iii) (1998); *Electronic Privacy Bill of Rights Act of 1998,* H.R. 4667, 105th Cong. § 105(7)(A)(iii) (1998). Under federal case law, the term ''knowingly'' encompasses actual, implied, and constructive knowledge. *See Schmitt* v. *FMA Alliance,* 398 F.3d 995, 997 (8th Cir. 2005); *Freeman United Coal Mining Co.* v. *Federal Mine Safety and Health Review Comm'n,* 108 F.3d 358, 363 (D.C. Cir. 1997).

Upon the consideration of testimony from various witnesses, Congress modified the knowledge standard in the final legislation to require ''actual knowledge.'' *See Internet Privacy Hearing: Hearing on S. 2326 Before the Subcomm. on Communications of the S. Comm. on Commerce, Science, and Transportation,* 105th Cong. 1069 (1998). Actual knowledge is generally understood from case law to establish a far stricter standard than constructive knowledge or knowledge implied from the ambient facts. *See United States* v. *DiSanto,* 86 F.3d 1238, 1257 (1st Cir. 1996) (citing *United States* v. *Spinney,* 65 F.3d 231, 236 (1st Cir. 1995), for the proposition that ''when considering the question of ''knowledge'' [it is helpful] to recall that ''the length of the hypothetical knowledge continuum'' is marked by ''constructive knowledge'' at one end and ''actual knowledge'' at the other with various ''gradations,'' such as ''notice of likelihood'' in the ''poorly charted area that stretches between the poles'').

[27] *See* Children's Online Privacy Protection Rule, Statement of Basis and Purpose (''1999 Statement of Basis and Purpose''), 64 FR 59888, 59889 (Nov. 3, 1999), available at *http://www.ftc.gov/os/1999/10/64Fr59888.pdf.*

[28] *See id.* at 59892 (''Actual knowledge will be present, for example, where an operator learns of a child's age or grade from the child's registration at the site or from a concerned parent who has learned that his child is participating at the site. In addition, although the COPPA does not require operators of general audience sites to investigate the ages of their site's visitors, the Commission notes that it will examine closely sites that do not directly ask age or grade, but instead ask 'age identifying' questions, such as 'what type of school do you go to: (a) elementary; (b) middle; (c) high school; (d) college.' Through such questions, operators may acquire actual knowledge that they are dealing with children under 13'').

[29] *See* CTIA (comment 14), at 2; Direct Marketing Association (''DMA'') (comment 17), at 8; MPAA (comment 42), at 9; Toy Industry Association, Inc. (comment 63), at 5; Jeffrey Greenbaum, Partner, Frankfurt Kurnit Klein & Selz PC, and J. Beckwith (''Becky'') Burr, Partner, WilmerHale, Remarks from *The ''Actual Knowledge'' Standard in Today's Online Environment* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online 78–79 (June 2, 2010), available at *http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[30] *See* Sharon Anderson (comment 2); Boku (comment 5); CDT (comment 9), at 6; CTIA (comment 14), at 2; DMA (comment 17), at 8; Facebook (comment 22), at 7; IAB (comment 34), at 6.

[31] *See* CTIA (comment 14), at 2; DMA (comment 17), at 8; Facebook (comment 22), at 7–8.

[32] *See* Harry A. Valetk (comment 66), at 4.

[33] *See* Institute for Public Representation (comment 33), at 34 (urging the Commission to make clear that an operator can gain actual knowledge where it obtains age information from a source other than the child and where it creates a category for behavioral advertising to children under age 13. ''Simply, if an operator decides on, or uses, or purports to know the fact that someone is a child, then that operator has actual knowledge that it is dealing with a child.''); Microsoft (comment 39), at 8 (asking the Commission to provide clear guidance on how operators can better meet COPPA's objectives of providing access to rich media content while not undermining parental involvement).

[34] For example, the Commission proposes defining as personal information persistent identifiers and screen or user names where they are

Commission to recommend that Congress change COPPA's actual knowledge standard, the changes the Commission proposes to the Rule's definitions might prove infeasible if applied across the entire Internet. The impact of the proposed changes to the definition of personal information are significantly narrowed by the fact that COPPA only applies to the finite universe of Web sites and online services directed to children and Web sites and online services with actual knowledge.

IV. COPPA's Coverage of Evolving Technologies

The Commission's April 5, 2010 **Federal Register** document sought public input on the implications for COPPA enforcement raised by technologies such as mobile communications, interactive television, interactive gaming, and other evolving media.[35] The Commission's June 2, 2010 roundtable featured significant discussion on the breadth of the terms ''Internet,'' ''website located on the Internet,'' and ''online service'' as they relate to the statute and the Rule.

Commenters and roundtable participants expressed a consensus that both the COPPA statute and Rule are written broadly enough to encompass many new technologies without the need for new statutory language.[36] First, there is widespread agreement that the statute's definition of ''Internet,'' covering the ''myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol,'' is device neutral.[37]

While neither the COPPA statute nor the Rule defines a ''Web site located on the Internet,'' the term is broadly understood to cover content that users can access through a browser on an ordinary computer or mobile device.[38] Likewise, the term ''online service'' broadly covers any service available over the Internet, or that connects to the Internet or a wide-area network.[39] The Commission agrees with commenters that a host of current technologies that access the Internet or a wide area network are ''online services'' currently covered by COPPA and the Rule. This includes mobile applications that allow children to play network-connected games, engage in social networking activities, purchase goods or services online, receive behaviorally targeted advertisements, or interact with other content or services.[40] Likewise, Internet-enabled gaming platforms, voice-over-Internet protocol services, and Internet-enabled location based services, also are online services covered by COPPA and the Rule. The Commission does not believe that the term ''online service'' needs to be further defined either in the statute or in the Rule.[41]

Although many mobile activities are online services, it is less clear whether all short message services (''SMS'') and multimedia messaging services (''MMS'') are covered by COPPA.[42] One commenter maintained that SMS and MMS text messages cross wireless service providers' networks and short message service centers, not the public Internet, and therefore that such services are not Internet-based and are not ''online services.''[43] However, another panelist at the Commission's June 2, 2010 roundtable cautioned that not all texting programs are exempt from COPPA's coverage.[44] For instance, mobile applications that enable users to send text messages from their web-enabled devices without routing through a carrier-issued phone number constitute online services.[45] Likewise, retailers' premium texting and coupon texting programs that register users online and send text messages from the Internet to users' mobile phone numbers are online services.[46]

The Commission will continue to assess emerging technologies to determine whether or not they constitute ''Web sites located on the Internet'' or ''online services'' subject to COPPA's coverage.

V. Proposed Modifications to the Rule

As discussed above, commenters expressed a consensus that, given its flexibility and coverage, the COPPA Rule continues to be useful in helping

used for functions other than or in addition to support for the internal operations of a Web site or online service. The Commission also proposes including identifiers that link the activities of a child across different Web sites or online services, as well as digital files containing a child's image or voice, in the definition. *See infra* Part V.A.(4).

[35] *See* 2010 Rule Review, *supra* note 7, at 17090.

[36] *See* CDT (comment 8), at 2; Edward Felten, Dir. and Professor of Computer Sci. and Pub. Affairs, Princeton Univ. (currently Chief Technologist at the Federal Trade Commission), Remarks from *The Application of COPPA's Definitions of ''Internet,'' ''Website,'' and ''Online Service'' to New Devices and Technologies* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online 13–14 (June 2, 2010), available at *http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf* (''[T]his was and still is a spot-on definition of what ''Internet'' means—worldwide interconnection and the use of TCP or IP or any of that suite of protocols.'').

[37] *See* CDT (comment 8), at 2. However, two commenters urged the Commission to consider modifying or expanding the definition of ''Internet'' so as to expressly acknowledge the convergence of technologies, *e.g.,* mobile devices and other applications that are platform neutral or capable of storing and transmitting data in the manner of a personal computer. *See* Electronic Privacy Information Center (''EPIC'') (comment 19), at 7–8; Jayne Hitchcock (comment 29).

[38] *See* AT&T (comment 3), at 5; Spratt (comment 57); Edward Felten, *supra* note 36, at 15.

[39] *See* John B. Morris, Jr., General Counsel and Director, Internet Standards, Technology and Policy Project, CDT, and Angela Campbell, Institute for Public Representation, Georgetown Univ. Law Ctr., Remarks from *The Application of COPPA's Definitions of ''Internet,'' ''Web site,'' and ''Online Service'' to New Devices and Technologies* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online 16–17 (June 2, 2010), available at *http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.* One commenter mentioned that the terms ''Internet'' and ''online'' were seemingly intended by Congress to be used interchangeably to mean ''the interconnected world-wide network of networks.'' *See* Entertainment Software Association (comment 20), at 15 (citing the legislative history, 144 Cong. Rec. S8482–83, Statement of Sen. Bryan (1998)). *But see* Edward Felten, *supra* note 36, at 19.

[40] *See, e.g.,* Angela Campbell, *supra* note 39, at 30–31.

[41] The FTC has brought a number of cases alleging violations of COPPA in connection with the operation of an online service, including: *United States* v. *W3 Innovations LLC,* No. CV–11–03958 (N.D. Cal., filed Aug. 12, 2011) (child-directed mobile applications); *United States* v. *Playdom, Inc.,* No. SA CV–11–00724 (C.D. Cal., filed May 11, 2011) (online virtual worlds); *United States* v. *Sony BMG Music Entertainment,* No. 08 Civ. 10730 (S.D.N.Y, filed Dec. 10, 2008) (social networking service); *United States* v. *Industrious Kid, Inc.,* No. CV–08–0639 (N.D. Cal., filed Jan. 28, 2008) (social networking service); *United States* v. *Xanga.com, Inc.,* No. 06–CIV–6853 (S.D.N.Y., filed Sept. 7, 2006) (social networking service); and *United States* v. *Bonzi Software, Inc.,* No. CV–04–1048 (C.D. Cal., filed Feb. 14, 2004) (desktop software application).

[42] *See* 2010 Rule Review, *supra* note 7, at 17090 (Question 11); *see also* Denise Tayloe, President, Privo, Inc., Remarks from *Emerging Parental Verification Access and Methods* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online 27 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf* (questioning whether a ''text to vote'' marketing campaign is covered by COPPA).

[43] *See* CTIA (comment 14), at 2–5 (citing the Federal Communications Commission's rules and regulations implementing the CAN–SPAM Act of 2003 and the Telephone Consumer Protection Act of 1991, finding that phone-to-phone SMS is not captured by Section 14 of CAN–SPAM because such messages do not have references to Internet domains). The Commission agrees that where mobile services do not traverse the Internet or a wide-area network, COPPA will not apply. *See* Michael Altschul, Senior Vice President and Gen. Counsel, CTIA, Remarks from *The Application of COPPA's Definitions of ''Internet,'' ''Web site,'' and ''Online Service'' to New Devices and Technologies* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 19–21 (June 2, 2010), available at *http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[44] *See* Edward Felten, *supra* note 36, at 27–28.

[45] For example, online texting services offered by TextFree, Textie, and textPlus+ that permit users to communicate via text message over the Internet.

[46] For example, text alert coupon and notification services offered by retailers such as Target and JC Penney.

to protect children as they engage in a wide variety of online activities. The Commission's experience in enforcing the Rule, and public input received through the Rule review process, however, demonstrate the need to update certain Rule provisions. After extensive consideration, the Commission proposes modifications to the Rule in the following five areas: Definitions, Notice, Parental Consent, Confidentiality and Security of Children's Personal Information, and Safe Harbor Programs. In addition to modifying these provisions, the Commission proposes adding a new Rule section addressing data retention and deletion. Each of these changes is discussed in detail below.

A. Definitions (16 CFR 312.2)

The Commission proposes to modify particular definitions to update the Rule's coverage and, in certain cases, to streamline the Rule's language. The Commission proposes modifications to the definitions of ''collects or collection,'' ''online contact information,'' ''personal information,'' ''support for the internal operations of the Web site or online service,'' and ''Web site or online service directed to children.'' The Commission also proposes a minor structural change to the Rule's definition of ''disclosure.''

(1) Collects or Collection

Section 312.2 of the Rule defines ''collects or collection'' as:

> [T]he gathering of any personal information from a child by any means, including but not limited to:
> (a) Requesting that children submit personal information online;
> (b) Enabling children to make personal information publicly available through a chat room, message board, or other means, except where the operator deletes all individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records; or
> (c) The passive tracking or use of any identifying code linked to an individual, such as a cookie.

The Commission proposes amending paragraph (a) to change the term ''requesting that children submit personal information online'' to ''requesting, prompting, or encouraging a child to submit personal information online'' in order to clarify that the Rule covers the online collection of personal information both when an operator mandatorily requires it, and when an operator merely prompts or encourages a child to provide such information.

Section 312.2(b) currently defines ''collects or collection'' to include enabling children to publicly post personal information (*e.g.,* on social networking sites or on blogs), ''except where the operator deletes all individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records.''[47] This aspect of COPPA's definition of ''collects or collection'' has come to be known as the ''100% deletion standard.''[48] Several commenters indicated that this standard, while well-meaning, serves as an impediment to operators' implementation of sophisticated filtering technologies that might aid in the detection and removal of personal information.[49] Some commenters urged the Commission to revise the Rule to specify the particular types of filtering mechanisms—for example, white lists, black lists, or algorithmic systems—that the Commission believes conform to the Rule's current 100% deletion requirement.[50] One commenter urged the Commission to exercise caution in modifying the Rule to permit the use of automated filtering systems to strip personal information from posts prior to posting; this commenter urged the Commission to make clear that the use of an automated system *would not* provide an operator with a safe harbor from enforcement action in the case of an inadvertent disclosure of personal information.[51]

The Commission has undertaken this Rule review with an eye towards encouraging the continuing growth of engaging, diverse, and appropriate online content for children that includes strong privacy protections by design. Children increasingly seek interactive online environments where they can express themselves, and operators should be encouraged to develop innovative technologies to attract children to age-appropriate online communities while preventing them from divulging their personal information. Unfortunately, Web sites that provide children with only limited communications options often fail to capture their imaginations for very long. After careful consideration, the Commission believes that the 100% deletion standard has set an unrealistic hurdle to operators' development and implementation of automated filtering systems.[52] In its place, the Commission proposes a ''reasonable measures'' standard whereby operators who employ technologies reasonably designed to capture *all or virtually all* personal information inputted by children should not be deemed to have ''collected'' personal information. This proposed change is intended to encourage the development of systems, either automated, manual, or a combination thereof, to detect and delete all or virtually all personal information that may be submitted by children prior to its public posting.[53]

Finally, the Commission proposes simplifying paragraph (c) of the Rule's definition of ''collects or collection'' to clarify that it includes all means of passive tracking of a child online, irrespective of the technology used. The proposed paragraph removes the language ''or use of any identifying code linked to an individual, such as a cookie'' and simply states ''passive tracking of a child online.''

Therefore, the Commission proposes to amend the definition of ''collects or collection'' so that it reads:

[47] Operators who offer services such as social networking, chat, bulletin boards and who do not pre-strip (*i.e.,* completely delete) such information are deemed to have ''disclosed'' personal information under COPPA's definition of ''disclosure.'' *See* 16 CFR 312.2.

[48] *See* Phyllis Marcus, Remarks from *COPPA's Exceptions to Parental Consent* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online 310 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[49] *See* Entertainment Software Association (comment 20), at 13–14; Rebecca Newton (comment 46), at 4; *see also* WiredSafety.org (comment 68), at 15.

[50] *See* Berin Szoka (comment 59), Szoka Responses to Questions for the Record, at 19 (''[T]he FTC could * * * allow operators, at least in some circumstances, to use ''an automated system of review and/or posting'' to satisfy the existing ''deletion exception to the definition of collection.'' In other words, sites could potentially allow children to communicate with each other through chat rooms, message boards, and other social networking tools *without* having to obtain verifiable parental consent if they had in place algorithmic filters that would automatically detect personal information such as a string of seven or ten digits that seems to correspond to a phone number, a string of eight digits that might correspond to a Social Security number, a street address, a name, or even a personal photo—and prevent children from sharing that information in ways that make the information ''publicly available''); *see also* Privo (comment 50), at 5.

[51] *See* EPIC (comment 19), at 6–7.

[52] In fact, inquiries about automated filtering systems, and whether they could ever meet the Commission's current 100% deletion standard, are among the most frequent calls to the Commission's COPPA hotline.

[53] In the Commission's experience, establishing a broad standard of reasonableness permits industry to innovate specific security methods that best suit particular needs, and the Commission has set similar ''reasonableness'' standards in other enforcement arenas. For example, in its law enforcement actions involving breaches of data security, the Commission consistently has required respondents to establish and maintain comprehensive information security programs that are ''reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers.'' *See, e.g., Ceridian Corp.,* FTC Dkt. No. C–4325 (June 15, 2011)*; Lookout Servs., Inc.,* FTC Dkt. No. C–4326 (June 15, 2011).

Collects or *collection* means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting, prompting, or encouraging a child to submit personal information online;

(b) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or,

(c) The passive tracking of a child online.[54]

(2) Disclosure

Section 312.2 of the Rule defines ''disclosure'' as:

(a) The release of personal information collected from a child in identifiable form by an operator for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the Web site or online service and who does not disclose or use that information for any other purpose. For purposes of this definition:

(1) Release of personal information means the sharing, selling, renting, or any other means of providing personal information to any third party, and

(2) Support for the internal operations of the Web site or online service means those activities necessary to maintain the technical functioning of the Web site or online service, or to fulfill a request of a child as permitted by §§ 312.5(c)(2) and (3); or, (b) Making personal information collected from a child by an operator publicly available in identifiable form, by any means, including by a public posting through the Internet, or through a personal home page posted on a Web site or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

The Commission proposes making several minor modifications to this definition that are consistent with the statutory definition. First, the Commission proposes broadening the title of this definition from ''disclosure'' to ''disclose or disclosure'' to clarify that in every instance in which the Rule refers to instances where an operator ''disclose[s]'' information, the definition of disclosure shall apply. In addition, the Commmission proposes moving the definitions of ''release of personal information'' and ''support for the internal operations of the Web site or online service'' contained within the definition of ''disclosure'' to stand-alone definitions within ' 312.2 of the Rule.[55] This change will clarify what is intended by the terms ''release of personal information'' and ''support for the internal operations of the Web site or online service'' where those terms are referenced elsewhere in the Rule and where they are not directly connected with the terms ''disclose'' or ''disclosure.'' [56]

Therefore, the Commission proposes to amend the definition of ''disclosure'' to read:

Disclose or disclosure means, with respect to personal information:

(a) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the Web site or online service; and,

(b) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the Internet, or through a personal home page or screen posted on a Web site or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

(3) ''Release of personal information''

The Commission proposes to define the term ''release of personal information'' separately from its current inclusion within the definition of ''disclosure.'' Since the term applies to provisions of the Rule that do not relate solely to disclosures,[57] this stand-alone definition will provide greater clarity as to the terms' applicability throughout the Rule. In addition, the Commission proposes technical changes to clarify that the term ''release of personal information'' primarily addresses business-to-business uses of personal information. Public disclosure of personal information is covered by paragraph (b) of the definition of ''disclosure.'' Therefore, the Commission proposes to revise the definition of ''release of personal information'' so that it reads:

Release of personal information means the sharing, selling, renting, or transfer of personal information to any third party.

(4) ''Support for the internal operations of the Web site or online service''

The Commission also proposes separating out the term ''support for the internal operations of the Web site or online service'' from the definition of ''disclosure.'' The Commission recognizes that the term ''support for internal operations of the Web site or online service''—*i.e.,* activities necessary to maintain the technical functioning of the Web site or online service—is an important limiting concept that warrants further explanation. The Rule recognizes that information that is collected by operators for the sole purpose of support for internal operations should be treated differently than information that is used for broader purposes.

The term currently is a part of the definitions of ''disclosure'' and ''third party'' within the Rule. As explained below, the Commission proposes to expand the definition of ''personal information'' to include ''screen or user names'' and ''persistent identifiers,'' when such items are used for functions other than or in addition to ''support for the internal operations of the Web site or online service.'' [58] In proposing to create a separate definition of ''support for the internal operations of a Web site or online service,'' the Commission also proposes to expand that definition to include ''activities necessary to protect the security or integrity of the Web site or online service.'' With this change, the Commission recognizes operators' need to protect themselves or their users from security threats, fraud, denial of service attacks, user misbehavior, or other threats to operators' internal operations.[59] In addition, the Commission proposes adding the limitation that information collected for such purposes may not be used or disclosed for any other purpose, so that if there is a secondary use of the information, it becomes ''personal information'' under the Rule.

The Commission recognizes that operators use persistent identifiers and screen names to aid the functionality and technical stability of Web sites and online services and to provide a good user experience, and the Commission does not intend to limit operators'

[54] One commenter, EPIC, expressed the opinion that the Rule's reference to information collected ''by any means'' in the definition of ''collects or collection'' is ambiguous with regard to information acquired offline that is uploaded, stored, or distributed to third parties by operators. *See* EPIC (comment 19), at 5. However, Congress limited the scope of COPPA to information that an operator collects *online* from a child; COPPA does not govern information collected offline. *See* 15 U.S.C. 6501(8) (defining the personal information as ''individually identifiable information about an individual collected online. * * *''); 144 Cong. Rec. S11657 (Oct. 7, 1998) (Statement of Sen. Bryan) (''This is an online children's privacy bill, and its reach is limited to information collected online from a child.'').

[55] The Commission also proposes minor changes to the definition of ''support for the internal operations of a Web site or online service,'' as described in Part V.A(5). below.

[56] For example, the term ''support for the internal operations of the Web site or online service'' is included within the proposed revisions to the definition of ''personal information.'' *See infra* Part V.A.(5). The term ''release of personal information'' is included within the proposed revised provision to ' 312.8 regarding ''Confidentiality, security, and integrity of personal information collected from children.'' *See infra* Part V.D.

[57] *See, e.g.,* discussion regarding 16 CFR 312.8 (confidentiality, security and integrity of children's personal information), *infra* Part V.D.

[58] *See infra* Part V.(5)(b) and (c).

[59] *See* WiredSafety.org (comment 68), at 17.

ability to collect such information from children for those purposes. However, the Commission also recognizes that such identifiers may be used in more expansive ways that affect children's privacy. In the sections that follow, the Commission sets forth the parameters within which operators may collect and use screen names and persistent identifiers without triggering COPPA's application.[60]

The Commission proposes to revise the definition of ''support for the internal operations of Web site or online service'' so that it states:

Support for the internal operations of the Web site or online service means those activities necessary to maintain the technical functioning of the Web site or online service, to protect the security or integrity of the Web site or online service, or to fulfill a request of a child as permitted by § 312.5(c)(3) and (4), and the information collected for such purposes is not used or disclosed for any other purpose.

(5) Online Contact Information

Section 312.2 of the Rule defines ''online contact information'' as ''an e-mail address or any other substantially similar identifier that permits direct contact with a person online.'' The Commission proposes to clarify this definition to flag that the term covers *all* identifiers that permit direct contact with a person online, and to eliminate any inconsistency between the stand-alone definition of online contact information and the use of the same term within the Rule's definition of ''personal information.''[61] The revised definition set forth below adds commonly used forms of online identifiers, including instant messaging user identifiers, voice over internet protocol (VOIP) identifiers, and video chat user identifiers. The proposed definition makes clear, however, that the identifiers included are not intended to be exhaustive, and may include other substantially similar identifiers that permit direct contact with a person online.

Therefore, the Commission proposes to amend the definition of ''online contact information'' to state:

Online contact information means an e-mail address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

(6) Personal Information

The COPPA statute defines personal information as individually identifiable information about an individual collected online, including:

(A) A first and last name;

(B) A home or other physical address including street name and name of a city or town;

(C) An e-mail address;

(D) A telephone number;[62]

(E) A Social Security number;

(F) Any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the Web site collects online from the child and combines with an identifier described in this paragraph.[63]

As explained below, the Commission proposes to use this statutorily granted authority in paragraph (F) to modify, and in certain cases, expand, upon the Rule's definition of ''personal information'' to reflect technological changes.

a. Online Contact Information (Revised Paragraph (c))

The Commission proposes to replace existing paragraph (c) of the Rule's definition of ''personal information,'' which refers to ''an e-mail address or other online contact information including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address,'' with the broader term ''online contact information,'' as newly defined.[64] Moreover, as discussed immediately below, the Commission proposes to move the existing reference to a ''screen name'' to a separate item within the definition of ''personal information.''

b. Screen or User Names (Revised Paragraph (d))

Currently, screen names are considered ''personal information'' under COPPA only when they reveal an individual's e-mail address. The Commission proposes instead that screen (or user) names be categorized as personal information when they are used for functions other than, or in addition to, support for the internal operations of the Web site or online service. This change reflects the reality that screen and user names increasingly have become portable across multiple Web sites or online services, and permit the direct contact of a specific individual online regardless of whether the screen or user names contain an e-mail address.[65]

The proposed definition exempts screen or user names that are used solely to maintain the technical functioning of the Web site or online service. This qualification is intended to retain operators' ability to utilize screen or user names *within* a Web site or online service (absent the collection, use, or disclosure of *other* personal information) without obtaining prior parental consent. Accordingly, an operator may allow children to establish screen names for use within a site or service. Such screen names may be used for access to the site or service, to identify users to each other, and to recall user settings. However, where the screen or user name is used for purposes other than to maintain the technical functioning of the Web site or online service, the screen name becomes ''personal information'' under the proposed Rule.

c. Persistent Identifiers (Revised Paragraph (g)) and Identifiers Linking a Child's Online Activities (New Paragraph (h))

The existing Rule includes as personal information ''a persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information.''[66] In its 1999 Statement of Basis and Purpose, the Commission discussed persistent identifiers that automatically are collected by Web sites, such as static IP addresses and

[60] *Id.*

[61] The Rule currently defines as personal information ''an e-mail address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address.'' 16 CFR 312.2 (paragraph (c), definition of ''personal information''). The Commission also proposes removing the listing of identifiers from the definition of personal information and substituting the simple phrase ''online contact information'' instead. *See infra* Part V.A.(4)(a). By doing so, the Commission hopes to streamline the Rule's definitions in a way that is useful and accessible for operators.

[62] The term ''telephone number'' includes landline, web-based, and mobile phone numbers.

[63] 15 U.S.C. 6502(8). The Federal Trade Commission originally used the authority granted under Section 6502(8)(F) to define personal information under the COPPA Rule to include the following pieces of information not specifically listed in the statute:

- Other online contact information, including but not limited to an instant messaging user identifier;
- A screen name that reveals an individual's e-mail address;
- A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; and,
- A combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting.

[64] *See supra* Part V.A.(4)(a).

[65] *See, e.g.,* OpenId, Windows Live ID, and the Facebook Platform.

[66] *See* paragraph (f) to the definition of ''personal information.'' 16 CFR 312.2.

processor serial numbers, stating that ''unless such identifiers are associated with other individually identifiable personal information, they would not fall within the Rule's definition of 'personal information.' '' Moreover, with respect to information stored in cookies, the Commission stated that ''[i]f the operator either collects individually identifiable information using the cookie or collects non-individually identifiable information using the cookie that is combined with an identifier, then the information constitutes 'personal information' under the Rule, regardless of where it is stored.'' [67] Taken together, these statements limit COPPA's coverage of persistent identifiers solely to those identifiers that are otherwise linked to ''personal information'' as defined by the Rule.

Developments in technology in the intervening twelve years since the COPPA Rule was issued, and the resulting implications for consumer privacy, have led to a widespread reexamination of the concept of ''personal information'' and of the types of information COPPA should cover.[68] While it is clear that COPPA always was intended to regulate an operator's ability to obtain information from, and market back to, children,[69] methods of marketing online have burgeoned in recent years. In this regard, the Commission sought comment on whether certain identifiers, such as IP address, zip code, date of birth, gender, and information collected in connection with online behavioral advertising, should now be included within the Rule's definition of ''personal information.'' [70]

Numerous comments to the Rule review addressed this question.[71] Several commenters opposed such an expansion, pointing out that the collection of certain identifiers, such as IP addresses, are integral to the delivery of online content.[72] According to these commenters, if an IP address, on its own, were to be included within the definition of ''personal information,'' virtually every Web site or online service directed to children would be subject to COPPA's requirements, regardless of whether any additional information is collected, used, or disclosed, because a browser's communication with a Web site typically reveals the user's IP address to the Web site operator. Commenters especially expressed concern about operators' ability to obtain prior verifiable parental consent in such situations.[73] In addition, some commenters noted that an IP address may not lead an operator to a specific individual, but rather, indicate only a particular computer or computing device shared by a number of individuals.[74]

Several other commenters addressed the question of whether identifiers such as cookies or other technologies used to track online activities should be included within the definition of ''personal information.'' As with the comments regarding IP addresses, these commenters maintained that uses of cookies and other tracking devices do not result in the contacting of specific individuals online as contemplated by Congress in the COPPA statute.[75] Moreover, some commenters asserted that these technologies can be used for a number of beneficial purposes, *e.g.,* some operators use cookies to protect children from inappropriate advertising (and conversely, to deliver only appropriate advertising); other operators use cookies to personalize children's online experiences. Finally, these commenters contended that expanding COPPA to include cookies and other online behavioral advertising technologies is unnecessary because existing self-regulatory principles for online behavioral advertising are sufficient to curtail targeted advertising to children.[76]

By contrast, several commenters asserted that identifiers such as cookies and IP addresses can be used by online operators to track and communicate with *specific* individuals and should be included within COPPA's categories of information considered to be personal.[77]

After careful consideration, the Commission believes that persistent identifiers can permit the contacting of a specific individual, and thus, with the limitations described below, should be included as part of a revised definition of ''personal information'' in the COPPA Rule. The Commission does not agree with commenters who argue that persistent identifiers only allow operators to contact a specific device or computer. Information that ''permits the physical or online contacting of a specific individual'' does not mean information that permits the contacting of only a single individual, to the exclusion of all other individuals. For example, the COPPA statute includes within the definition of ''personal information'' a home address alone or a phone number alone—information that is often applicable to an entire household. The Commission believes this reflects the judgment of Congress that an operator who collects this information is reasonably likely to be able to contact a specific individual, even without having collected other identifying information. The Commission believes the same is true of persistent identifiers.

Moreover, increasingly, consumer access to computers is shifting from the model of a single, family-shared,

[67] *See* 1999 Statement of Basis and Purpose, 64 FR 59888, 59892–93.

[68] Commission staff recognized in its 2009 online behavioral advertising report that, ''in the context of online behavioral advertising, the traditional notion of what constitutes PII versus non-PII is becoming less and less meaningful and should not, by itself, determine the protections provided for consumer data.'' FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising, 21–22 (Feb. 2009), *available at http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf.* Similarly, the Federal Trade Commission 2010 Staff Privacy Report cited widespread recognition among industry and academics that the traditional distinction between the two categories of data has eroded, and that information practices and restrictions that rely on this distinction are losing their relevance. *See* Protecting Consumer Privacy in an Era of Rapid Change, *supra* note 23, at 35–36.

[69] *See* 144 Cong. Rec. S8482 (July 17, 1998) (Statement of Sen. Bryan) (''Unfortunately, the same marvelous advances in computer and telecommunication technology that allow our children to reach out to new resources of knowledge and cultural experiences are also leaving them unwittingly vulnerable to exploitation and harm by deceptive marketers and criminals * * *. Much of this information appears to be harmless, but companies are attempting to build a wealth of information about you and your family without an adult's approval—a profile that will enable them to target and to entice your children to purchase a range of products. The Internet gives marketers the capability of interacting with your children and developing a relationship without your knowledge'').

[70] *See* 2010 Rule Review, *supra* note 7, at 17090.

[71] *See, e.g.,* BOKU (comment 5); CDT (comment 8); DMA (comment 17), at 6–9; Entertainment Software Association (comment 20), at 17–18; Google, Inc. (comment 24), at 6–7; Institute for Public Representation (comment 33), at 21; IAB (comment 34), at 3–5; Interstate Commerce Coalition (comment 35), at 2; Microsoft Corporation (comment 39), at 9–10; MPAA (comment 42), at 6–7; NetChoice (comment 45), at 6–7; Paul Ohm (comment 48); TechAmerica (comment 61), at 5–6; Toy Industry Association, Inc. (comment 63), at 7–10; TRUSTe (comment 64), at 3–5.

[72] *See* Google, Inc. (comment 24), at 7; Internet Commerce Coalition (comment 35), at 2–3.

[73] *See, e.g.,* Entertainment Software Association (comment 20), at 18; Interstate Commerce Coalition (comment 35), at 2.

[74] *See* Toy Industry Association, Inc. (comment 63), at 9; TRUSTe (comment 64), at 5.

[75] *See* Facebook (comment 22), at 6; Microsoft Corporation (comment 39), at 9; Toy Industry Association, Inc. (comment 63), at 7.

[76] *See* CDT (comment 8, at 8) (referring to the Network Advertising Initiative's *2008 NAI Principles Code of Conduct*); Entertainment Software Association (comment 20), at 19 (referring to the *Self-Regulatory Principles for Online Behavioral Advertising* issued by the American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau, and Council of Better Business Bureaus in July 2009); Facebook (comment 22), at 7.

[77] *See* Common Sense Media (comment 12), at 8; EPIC (comment 19), at 9; Institute for Public Representation (comment 33), at 21.

personal computer to the widespread distribution of person-specific, Internet-enabled, handheld devices to each member within a household, including children.[78] Such handheld devices often have one or more unique identifiers associated with them that can be used to persistently link a user across Web sites and online services, including mobile applications.[79] With this change in computing use, operators now have a better ability to link a particular individual to a particular computing device.

At the same time, the Commission is mindful of the concerns raised by commenters that including persistent identifiers within the definition of personal information, without further qualification, would hinder operators' ability to provide basic online services to children. Several commenters indicated that Web sites and online services must identify and use IP addresses to deliver content to computers; if IP addresses, without more, were treated as ''personal information'' under COPPA, a site or service would be liable for collecting personal information as soon as a child landed on its home page or screen.[80] The Commission agrees that such an approach is over-broad and unworkable.[81]

The Commission believes that when a persistent identifier is used only to support the internal operations of a Web site or online service, rather than to compile data on specific computer users, the concerns underlying COPPA's purpose are not present.[82] Accordingly, the Commission proposes to modify the definition of ''personal information'' by revising paragraph (g), and adding a paragraph (h), as follows:

(g) A persistent identifier, including but not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier, where such persistent identifier is used for functions other than or in addition to support for the internal operations of the Web site or online service;

(h) an identifier that links the activities of a child across different Web sites or online services;

Proposed paragraph (g)—which covers persistent identifiers *where they are used for functions other than, or in addition to, support for the internal operations of the Web site or online service*—is designed not to interfere with operators' ability to deliver content to children within the ordinary operation of their Web sites or online services. This limitation takes into account the comments expressing concern about the potential for COPPA to interfere with the ordinary operation of Web sites or online services.[83] The new language in the definition would permit operators' use of persistent identifiers for purposes such as user authentication, improving site navigation, maintaining user preferences, serving contextual advertisements, and protecting against fraud or theft. However, the new language would require parental notification and consent prior to the collection of persistent identifiers where they are used for purposes such as amassing data on a child's online activities or behaviorally targeting advertising to the child. Therefore, operators such as network advertisers may not claim the collection of persistent identifiers as a technical function under the ''support for internal operations'' exemption.

New paragraph (h) of the definition of ''personal information'' is intended to serve as a catch-all category covering the online gathering of information about a child over time for the purposes of either online profiling or delivering behavioral advertising to that child.[84] For example, an advertising network or analytics service that tracks a child user across a set of Web sites or online services, but stores this information in a separate database rather than with the persistent identifier, would be deemed to have collected personal information from the child under this proposed paragraph.

Several commenters stated that industry self-regulatory efforts more effectively address the treatment of online behavioral advertising to children than would regulation in this area. For example, citing the industry's 2009 *Self-Regulatory Principles for Online Behavioral Advertising,* the Direct Marketing Association asserted that ''robust self-regulation is the best and most appropriate way to address privacy concerns in connection with online behavioral advertising, including concerns related to children.'' [85]

The Commission finds this argument unpersuasive. Although self-regulation can play an important role in consumer protection, Congress specifically directed the Commission to promulgate and implement regulations covering the online collection, use, and disclosure of children's personal information. To the extent that children's personal information is collected in connection with behavioral advertising, such information should be protected under the Rule. While self-regulatory programs can be valuable in promoting compliance, the proposed revision implements the COPPA statute and is enforceable by law.[86]

[78] *See* Common Sense Media, *Do Smart Phones = Smart Kids? The Impact of the Mobile Explosion on America's Kids, Families, and Schools* (Apr. 2010), *available at http://www.commonsensemedia.org/smartphones-smartkids* (citing a study from the NPD Group, Inc. finding that 20% of U.S. children ages 4–14 owned a cell phone in 2008); N. Jackson, ''More Kids Can Work Smartphones Than Can Tie Their Own Shoes,'' The Atlantic (Jan. 24, 2011), available at *http://www.theatlantic.com/technology/archive/2011/01/more-kids-can-work-smartphones-than-can-tie-their-own-shoes/70101/; see also* S. Smith, ''Now It's Personal: Mobile Nears the Privacy Third Rail,'' Behavioral Insider (Apr. 22, 2011), *available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=149196* (warning that ''[m]any of the arguments used to assuage worries about digital privacy online are simply less effective [in the mobile space]. When data can be tied to specific device IDs, times and location, insistence that the resulting data is 'anonymized' (no matter how true it may be) is very hard for the layman to swallow.'').

[79] Sometimes called ''processor serial numbers,'' ''device serial numbers,'' or ''unique device identifier,'' unique identifiers refer to software-readable or physical numbers embedded by manufacturers into individual processors or devices. *See, e.g.,* J. Valentino-DeVries, *Unique Phone ID Numbers Explained,* Wall St. J. (Dec. 19, 2010), *available at http://blogs.wsj.com/digits/2010/12/19/unique-phone-id-numbers-explained/.*

[80] *See* CDT (comment 9), at 7–8; DMA (comment 17), at 6; Entertainment Software Association (comment 20), 17–18; Google (comment 24), 7; Internet Commerce Coalition (comment 35), at 2–3; and TechAmerica (comment 61), at 6.

[81] As some commenters noted, it would be impracticable to obtain verifiable parental consent prior to the collection of an IP address for purposes of delivering online content, since Web site operators would not know at that point in time that the Web site visitor was a child, and would have no means of obtaining consent from that child's parent. *See, e.g.,* Internet Commerce Coalition (comment 35), at 2.

[82] *See* 144 Cong. Rec. S8482 (July 17, 1998) (Statement of Sen. Bryan).

[83] *See* Boku (comment 5) (encouraging the Commission to regulate the use of identifiers such as IP address, device data, or any other data automatically captured during interaction with a user and a web site rather than the data capture itself or the storage of such data; *see also* CDT (comment 8), at 8 (asserting that a prohibition on the *mere collection* of this data would undermine the very functioning of the Internet).

[84] ''Online behavioral advertising'' is the practice of tracking an individual's online activities in order to deliver advertising tailored to the individual's interests. *See* Self-Regulatory Principles for Online Behavioral Advertising, *supra* note 68, at *i.*

[85] DMA (comment 17), at 7 (directing the Commission's attention to *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009), at 16–17, available at *http://www.the-dma.org/government/ven-principles%2007-01-09%20FINAL.pdf. See also* Entertainment Software Association (comment 20), at 19; Facebook (comment 22), at 7; IAB (comment 34), at 3; Microsoft (comment 39), at 9–10; Mobile Marketing Association (comment 40), at 3; Toy Industry Association (comment 63), at 9.

[86] Although it is unclear from the record before the Commission whether operators currently are directing online behavioral advertising to children (various members of industry have informed Commission staff that they do not believe such activity is occurring while media reports have indicated the widespread presence of tracking tools

d. Photographs, Videos, and Audio Files (New Paragraph (i))

The Rule's existing definition of ''personal information'' includes photographs only when they are combined with ''other information such that the combination permits physical or online contacting.'' Given the prevalence and popularity of posting photos, videos, and audio files online, the Commission has reevaluated the privacy and safety implications of such practices as they pertain to children. Inherently, photos can be very personal in nature. Also, photographs of children, in and of themselves, may contain information, such as embedded geolocation data, that permits physical or online contact.[87] In addition, facial recognition technology can be used to further identify persons depicted in photos.[88]

The Commission believes that, with respect to the subset of Web sites and online services directed to children or having actual knowledge of collecting personal information from children, broader Rule coverage of photos is warranted.[89] In addition, the Commission believes that the Rule's definition of ''personal information'' should be expanded to include the posting of video and audio files containing a child's image or voice, which, similarly to photos, may enable the identification and contacting of a child. Therefore, the Commission proposes to create a new paragraph (i) of the definition of ''personal information'' that states:

(i) A photograph, video, or audio file where such file contains a child's image or voice; This proposed change will ensure that parents are given notice and the opportunity to decide whether the posting of images or audio files is an activity in which they wish their children to engage.

e. Geolocation Information (New Paragraph (j))

In recent years, geolocation services have become ubiquitous features of the personal electronics market.[90] Numerous commenters raised with the Commission the issue of the potential risks associated with operators' collection of geolocation information from children. Some commenters urged the Commission to expressly modify the Rule to include geolocation information, given the current pervasiveness of such technologies and their popularity among children.[91] Others maintained that geolocation information is already covered by existing paragraph (b) of the Rule's definition of ''personal information,'' which includes ''a home or other physical address including street name and name of a city or town'' [92]

Technologies that collect geolocation information can take a variety of forms and can communicate location with varying levels of precision. Generally speaking, most commonly used location tracking technologies are capable of revealing a person's location at least down to the level of a street name and the name of a city or town.[93] In the Commission's view, any geolocation information that provides precise enough information to identify the name of a street and city or town is covered already under existing paragraph (b) of the definition of ''personal information.'' However, because geolocation information may be presented in a variety of formats (*e.g.,* coordinates or a map), and in some instances may be more precise than street name and name of city or town, the Commission proposes making geolocation information a stand-alone category within that definition.

Those commenters who opposed the inclusion of geolocation information within COPPA's definition of ''personal information'' argued that such information cannot be used to identify a specific individual, but only a device.[94] However, as discussed above, the Commission finds this argument unpersuasive.[95] Physical address, including street name and name of city or town, alone is considered personal information under COPPA. Accordingly, geolocation data that provides information at least equivalent to ''physical address'' should be covered as personal information.

f. Date of Birth, Gender, and ZIP Code

Several commenters recommended that the Commission include date of birth, gender, or ZIP code in the definition of ''personal information.'' [96] The Commission gave careful thought to these recommendations, but is not proposing to include these items within

on children's Web sites, *see* Steven Stecklow, *On the Web, Children Face Intensive Tracking,* Wall St. J., Sept. 17, 2010), the Commission notes that the self-regulatory guidelines cited by the commenters do not expressly require prior parental consent for such advertising to occur. Rather, operators who adhere to such guidelines are merely cautioned that they should comply with COPPA when engaging in online behavioral advertising. *See Self-Regulatory Principles for Online Behavioral Advertising, supra* note 85, at 16–17 (''Entities should not collect 'personal information', as defined in the Children's Online Privacy Protection Act ('COPPA'), from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA''). Moreover, the self-regulatory standards cited by commenters do not collectively represent all operators subject to COPPA.

[87] In addition to the personal information that may be viewable in a photograph or video, geolocation data is commonly embedded as hidden ''metadata'' within these digital images. These data usually consist of latitude and longitude coordinates, and may also include altitude, bearing, distance, and place names. Such geolocation information may be used by operators and may also be accessed by the viewing public. The Commission proposes to specifically enumerate ''geolocation information'' as a separate category of ''personal information'' under the Rule. *See infra* Part V.A.(4)(e).

[88] *See* M. Geuss, ''Facebook Facial Recognition Could Get Creepy: new facial recognition technology used to identify your friends in photos could have some interesting applications—and some scary possibilities,'' PC World (Apr. 26, 2011), available at *http://www.pcworld.com/article/226228/facebook_facial_recognition_its_quiet_rise_and_dangerous_future.html* (discussing Facebook's facial recognition technology, and similar technologies offered by services such as Viewdle, Fotobounce, Picasa, iPhoto, and Face.com).

[89] Although the Commission received little comment on this topic, one individual commenter, as well as the Commission-approved COPPA safe harbor, TRUSTe, strongly supported this approach. *See* Gregory Schiller (comment 47); Office of the State Attorney—15th Judicial Circuit in and for Palm Beach County, Florida (comment 47); TRUSTe (comment 64), at 4; Maureen Cooney, Chief Privacy Officer, TRUSTe, Remarks from *COPPA's Definition of ''Personal Information''* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 191–92 (June 2, 2010), available at *http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[90] For example, geolocation-based navigation tools help users reach destinations, find local businesses or events, find friends and engage in social networking, ''check in'' at certain locations, and link their location to other activities. Many users access geolocation services through mobile devices. However, devices such as laptop and desktop computers, tablets, and in-car navigation and assistance systems also may be used to access such services. Geolocation information may be used once for a single purpose, or it may be stored or combined with other information to produce a history of a user's activities or a detailed profile for advertising or other purposes. *See* ACLU, ''Location Based Services: Time For a Privacy Check-In'' 1, 3 (Nov. 2010) *available at http://dotrights.org/sites/default/files/lbs-white-paper.pdf.*

[91] *See, e.g.,* EPIC (comment 19), at 8.

[92] *See* Institute for Public Representation (comment 33), at 26; TRUSTe (comment 64), at 4. *See also* Jules Polonetsky, Director, Future of Privacy Forum; Paul Ohm, Professor, Univ. of Colorado Law School; Sheila A. Millar, Partner, Keller & Heckman LLP; Matt Galligan, Founder and CEO, SimpleGeo; Heidi C. Salow, Of Counsel, DLA Piper, Remarks from *COPPA's Definition of ''Personal Information''* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 195, 205–07 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[93] *See* ACLU, *supra* note 90, at 9.

[94] *See* DMA (comment 17), at 7–8; MPAA (comment 42), at 6–7; Net Choice (comment 45), at 6.

[95] *See supra* Part V.A.(6)(c).

[96] *See* EPIC (comment 19), at 8–9; Institute for Public Representation (comment 33), at 33.

the definition because the Commission does not believe that any one of these items of information, alone, permits the physical or online contacting of a specific individual. However, the Commission seeks input as to whether the *combination* of date of birth, gender, and ZIP code provides sufficient information to permit the contacting of a specific individual such that this combination of information should be included in the Rule as ''personal information.'' [97] Moreover, there is a question whether an operator's collection of ''ZIP+4'' may, in some cases, be the equivalent of a physical address. '' ZIP+4 Code consists of the original 5-digit ZIP Code plus a 4-digit add-on code that identifies a geographic segment within the 5-digit delivery area, such as a city block, office building, individual high-volume receiver of mail, or any other unit that would aid efficient mail sorting and delivery.[98] The Commission seeks input on whether ZIP+4 is the equivalent of a physical address and whether it should be added to the Rule.[99]

g. Other Collections of Information

Taking a different view of ''personal information,'' one commenter argued that the Commission should move away from identifying new particular individual items of personal information, and instead add to the definition ''any collection of more than twenty-five distinct categories of information about a user.'' [100] This proposed definition is based on the premise that above a certain quantity threshold, the information an operator holds about a particular user becomes sufficiently identifying so as to be ''personal.'' The Commission recognizes the potential for collections of diverse bits of information to permit the identification of a specific individual; however, the record is not sufficiently developed at this time to support a quantity-based approach to defining personal information. Without greater specificity, a quantity-based approach would not provide operators with sufficient certainty to determine which collections and combinations of information trigger the Rule's requirements and which do not. As a result, this standard would be difficult for operators to implement, as well as for the government to enforce.[101] The Commission believes that setting bright-line categories of personal information, while potentially both over- and under-inclusive, provides greater certainty for operators seeking to follow the Rule.

(7) Web Site or Online Service Directed to Children

The Commission also considered whether any changes needed to be made to the Rule's definition of ''website or online service directed to children.'' The current definition is largely a ''totality of the circumstances'' test that provides sufficient coverage and clarity to enable Web sites to comply with COPPA, and the Commission and its state partners to enforce COPPA.[102] Few commenters addressed the definition. However, one commenter, the Institute for Public Representation, suggested that the Rule be amended so that a Web site *per se* should be deemed ''directed to children'' if audience demographics show that 20% or more of its visitors are children under age 13.[103]

The current definition of ''website or online service directed to children'' already notes that the Commission will consider competent and reliable empirical evidence of audience composition as part of a totality of circumstances analysis. The Commission's experience with online audience demographic data in both its studies of food marketing to children and marketing violent entertainment to children shows that such data is neither available for all Web sites and online services, nor is it sufficiently reliable, to adopt it as a *per se* legal standard.[104] Accordingly, the Commission declines to adopt a standard akin to the 20% standard proposed by the Institute for Public Representation.

However, the Commission proposes minor modifications to the definition, as follows. First, as part of the totality of the circumstances analysis, the Commission proposes modifying the term ''audio content'' to include musical content. In addition, the Commission proposes adding the presence of child celebrities, and celebrities who appeal to children, within the non-exclusive set of indicia it will use to determine whether a Web site or online service is directed to children. In the Commission's experience, both music and the presence of celebrities are strong indicators of a Web site or online service's appeal to children. Finally, the Commission proposes reordering the language of the definition so that the terms ''animated characters'' and ''child-oriented activities and incentives'' are addressed alongside the other indicia of child-directed content.

Therefore, the proposed definition of ''Web site or online service directed to children'' reads:

Website or online service directed to children means a commercial Web site or online service, or portion thereof, that is targeted to children. Provided, however, that a commercial Web site or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial Web site or online service, or a portion thereof, is targeted to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.

B. Notice (16 CFR 312.4)

The linchpins of the COPPA Rule are its parental notice and consent requirements. Providing parents with clear and complete notice of operators' information practices is the necessary first step in obtaining informed consent

[97] *See infra* Part X. at Question 9(b). Commenter Paul Ohm cites to several studies finding that a significant percentage of individuals can be uniquely identified by the combination of these three pieces of information. *See* Paul Ohm (comment 48), at 3, note 7.

[98] *See* United States Postal Service, Frequently Asked Questions, ZIP Code Information, http://faq.usps.com/eCustomer/iq/usps/(search ''ZIP Code Information''; then follow ''ZIP Code Information'' hyperlink) (last visited September 12, 2011).

[99] *See infra* Part X. at Question 9(c).

[100] *See* Paul Ohm (comment 48), at 2.

[101] Professor Ohm acknowledges that ''most websites probably do not count their data in this way today, so the regulation will require some websites to expend modest new resources to comply. Moreover, every time a website decides to collect new categories of information from users, it needs to recalculate its count.'' *Id.* at 8–9.

[102] *See, e.g., United States* v. *Playdom, Inc.,* No. SA CV–11–00724 (C.D.Ca., filed May 11, 2011) (finding defendants' Pony Stars Web site to be ''directed to children''); *United States* v. *Industrious Kid, Inc.,* No. CV–08–0639 (N.D. Cal., filed Jan. 28, 2008); *United States* v. *UMG Recordings, Inc.,* No. CV–04–1050 (C.D. Cal., filed Feb. 17, 2004); *United States* v. *Bonzi Software, Inc.,* No. CV–04–1048 (C.D. Cal., filed Feb. 17, 2004).

[103] *See* Institute for Public Representation (comment 33), at iii (urging the Commission to adopt the same threshold, 20%, used in the Commission's 2007 food marketing Orders to File a Special Report).

[104] In the context of the Commission's food marketing studies, food marketers were required to identify and report Web site expenditures targeted to children based on a number of criteria, one of which was whether audience demographic data indicated that 20% or more of visitors to a Web site were children ages 2–11. *See* Fed. Trade Comm'n, Order to File Special Report, B–3, note 14 (July 31, 2007) *available at http://www.ftc.gov/os/6b_orders/foodmktg6b/070731boskovichfarmssixb.pdf.* There, the 20% threshold was not used as a basis to impose legal liability for a Rule violation.

from parents. COPPA requires that parents be notified in two ways: on the operator's Web site or online service (the ''online notice,'' which typically takes the form of a privacy policy), and in a notice delivered directly to a parent whose child seeks to register on the site or service (the ''direct notice''). The current Rule requires that operators provide extensive information about their children's privacy practices in their online notice. While the Rule states that the direct notice must contain the information an operator includes in its online notice as well as certain additional information, in the past, the Commission has indicated that operators may truncate the information in the direct notice by providing a hyperlink to their online privacy policy.[105]

Outside the COPPA context, in recent years, the Commission has begun to urge industry to provide consumers with notice and choice about information practices at the point consumers enter personal data or before accepting a product or service.[106] The analogous point of entry under COPPA would be the direct notice, which has the potential to provide parents with the best opportunity to consider an operator's information practices and to determine whether to permit children's engagement with such operator's Web site or online service. Therefore, the Commission proposes to revise the notice requirements to reinforce COPPA's goal of providing complete and clear information in the direct notice, and to rely less heavily on the online notice or privacy policy as a means of providing parents with information about operators' information practices.[107]

(1) Notice on the Web site or Online Service (Revised Paragraph (b))

The Commission proposes to streamline § 312.4(b),[108] regarding the placement and content of the notice of information practices that operators must provide on their Web sites or in their online services. The language regarding the required placement of this online notice has been shortened and clarified, thereby making the provision more instructive to operators. The revised language more succinctly requires that the online notice be clearly labeled and prominently located, and be posted on an operator's home page or home screen and at each location where the operator collects personal information from children.[109]

With respect to the content of the online notice, the Commission proposes several improvements to the Rule's current list of requirements. First, the Commission proposes requiring operators to provide contact information, including, at a minimum, the operator's name, physical address, telephone number, and e-mail address. In contrast to the current Rule, this proposal would apply to *all* operators of a Web site or online service, rather than permitting the designation of a single operator as the contact point. Given the possibility of a child interacting with multiple operators on a single Web site or online service (*e.g.,* in the case of a mobile application that grants permission to an advertising network to collect user information from within the application), the Commission believes that the identification of each operator will aid parents in finding the appropriate party to whom to direct any inquiry.

Second, the Commission proposes eliminating the Rule's current lengthy—yet potentially under-inclusive—recitation of an operator's information collection, use, and disclosure practices in favor of a simple statement of: (1) What information the operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available, (2) how the operator uses such information, and (3) the operator's disclosure practices for such information.[110] In the Commission's experience, privacy policies are often long and difficult to understand, and may no longer be the most effective way to communicate salient information to consumers, including parents.[111] By streamlining the Rule's online notice requirements by reverting to the language of the COPPA statute, the Commission hopes to encourage operators to provide clear, concise descriptions of their information practices, which may have the added benefit of being easier to read on smaller screens (*e.g.,* those on Internet-enabled mobile devices).

The Commission also proposes eliminating the requirement, articulated in § 312.4(b)(2)(v), that an operator's privacy policy state that the operator may not condition a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity. In the Commission's experience, this blanket statement, often parroted verbatim in operators' privacy policies, detracts from the key information of operators' actual information practices, and yields little value to a parent trying to determine whether to permit a child's participation. In proposing to delete this requirement in the privacy notice, however, the Commission does not propose deleting § 312.7 of the Rule, which still prohibits operators from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.[112]

Therefore, the Commission proposes to revise paragraph (b) of § 312.4 so that it states:

(b) *Notice on the Web site or online service.* Pursuant to § 312.3(a), each operator of a Web site or online service directed to children must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its Web site or online service, *and,* at each area of the Web site or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. An operator of a general audience Web site or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be complete, the online notice of the Web site or online service's information practices must state the following:

(1) Each operator's contact information, which at a minimum, must include the operator's name, physical address, telephone number, and e-mail address;

(2) A description of what information each operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available; how such operator uses such information, and; the operator's disclosure practices for such information; and,

(3) That the parent can review and have deleted the child's personal information, and refuse to permit further collection or use of

[105] *See* 1999 Statement of Basis and Purpose, 64 FR 59888, 59897.

[106] *See* Protecting Consumer Privacy in an Era of Rapid Change, *supra* note 23, at 57–59.

[107] The proposed changes to the direct notice provision, discussed in Part V.B.(2) *infra,* would reverse the Commission's guidance that operators may truncate the information in the direct notice by providing a hyperlink to their online privacy policy. *See* note 105 and accompanying text.

[108] No changes are proposed to § 312.4(a) (''general principles of notice'').

[109] The Commission poses a question whether the Rule should be modified to require operators to post a link to their online notice in any location where their mobile applications can be purchased or otherwise downloaded. *See infra* Part X. at Question 14.

[110] This language mirrors the statutory requirements for the online notice. *See* 15 U.S.C. 6503(b)(1)(A)(i).

[111] *See* Protecting Consumer Privacy in an Era of Rapid Change, *supra* note 23, at 7.

[112] *See* 16 CFR 312.7.

the child's information, and state the procedures for doing so.[113]

(2) Direct Notice to a Parent (Revised Paragraph (c))

As described above, the Commission proposes refining the Rule requirements for the direct notice to ensure that this notice works as an effective ''just-in-time'' message to parents about an operator's information practices. Specifically, the Commission proposes to reorganize and standardize the direct notice requirement to set forth the precise items of information that must be disclosed in each type of direct notice required under the Rule. These specific notice requirements correspond to the requirements for obtaining parental consent under § 312.5 of the Rule. The proposed reorganization is intended to make it easier for operators to determine what information they must include in the direct notice to parents, based upon operators' particular information collection practices.

The proposed revised language of § 312.4(c) specifies, for each different form of direct notice required by the Rule, the precise information that operators must provide to parents regarding: The items of personal information the operator already has obtained from the child (the parent's online contact information either alone or together with the child's online contact information); the purpose of the notification; action that the parent must or may take; and, what use, if any, the operator will make of the personal information collected. The proposed revised provision also makes clear that each form of direct notice must provide a hyperlink to the operator's online notice of information practices. The Commission believes the proposed revisions will help ensure that parents receive key information up front, while directing them online to view any additional information contained in the operator's online notice.

The Commission also proposes adding a new paragraph, § 312.4(c)(2), setting out the requirements for a direct notice when an operator chooses to collect a parent's online contact information from the child in order to provide parental notice about a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. This new form of parental notice corresponds to a newly proposed exception to the parental consent requirement for the collection of a parent's online contact information when done to inform the parent of a child's participation in a Web site or online service that does not otherwise collect personal information from the child.[114]

Therefore, the Commission proposes to revise paragraph (c) of § 312.4 so that it reads:

(c) *Direct notice to a parent.* An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of the child's personal information, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.

(1) *Content of the direct notice to the parent required under § 312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information).* This direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child in order to obtain the parent's consent;

(ii) That the parent's consent is required for the child's participation in the Web site or online service, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;

(iii) The additional items of personal information the operator intends to collect from the child, if any, and the potential opportunities for the disclosure of personal information, if any, should the parent consent to the child's participation in the Web site or online service;

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(b);

(v) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and,

(vi) That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.

(2) *Content of the direct notice to the parent allowed under § 312.5(c)(2) (Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information).* This direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child in order to provide notice to the parent of a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information; and,

(ii) That the parent's online contact information will not be used or disclosed for any other purpose;

(iii) That the parent may refuse to permit the operator to allow the child to participate in the Web site or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and,

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

(3) *Content of the direct notice to the parent required under § 312.5(c)(4) (Notice to a Parent of Operator's Intent to Communicate with the Child Multiple Times).* This direct notice shall set forth:

(i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;

(ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;

(iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;

(iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;

(v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and,

(vi) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

(4) *Content of the direct notice to the parent required under § 312.5(c)(5) (Notice to a Parent In Order to Protect a Child's Safety).* This direct notice shall set forth:

(i) That the operator has collected the child's name and the online contact information of the child and the parent in order to protect the safety of a child;

(ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;

(iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;

(iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and,

(v) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

C. Parental Consent (16 CFR 312.5)

A central element of COPPA is its requirement that operators seeking to collect, use, or disclose personal

[113] No change is proposed to the Rule's requirement that operators disclose that a parent may review and have deleted a child's personal information and refuse to permit further collection or use of that child's information. Although one commenter observed that parents seldom exercise these rights, *see* WiredSafety.org (comment 68), at 28, the Commission believes that requiring operators to provide such rights to parents remains an important element of the Rule. In the context of its broader inquiry into how to best protect privacy in today's marketplace, Commission staff is exploring methods of ensuring consumer access to data as a means of increasing the transparency of companies' data practices. *See* Protecting Consumer Privacy in an Era of Rapid Change, *supra* note 23, at 72–76.

[114] *See infra* Part V.C.(4).

information from children first obtain verifiable parental consent.[115] ''Verifiable parental consent'' is defined in the statute as ''any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure, described in the notice.'' [116] In paragraph (b)(1), the Rule provides that operators:

> must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated in light of available technology to ensure that the person providing consent is the child's parent.

The Rule then sets forth a non-exclusive list of methods that meet the standard of verifiable parental consent.[117] Specifically, paragraph (b)(2) states:

> Methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: Providing a consent form to be signed by the parent and returned to the operator by postal mail or facsimile; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph.[118]

The Rule's enumerated consent mechanisms were discussed in-depth at the Commission's June 2, 2010 COPPA roundtable and also were addressed by a number of commenters.[119] While several persons acknowledged that no one method provides complete certainty that the operator has reached and obtained consent from a parent, they generally agreed that the listed methods continue to have utility for operators and should be retained.[120] A great number of commenters also urged the Commission to expand the list of acceptable mechanisms to incorporate newer technologies.[121] After careful consideration, the Commission proposes several significant changes to the mechanisms of verifiable parental consent set forth in paragraph (b) of § 312.5, including: Adding several newly recognized mechanisms for parental consent; eliminating the sliding scale approach to parental consent; and, adding two new processes for evaluation and pre-clearance of parental consent mechanisms.

(1) Mechanisms for Verifiable Parental Consent (Paragraph (b)(2))

A number of commenters made suggestions for strengthening, modernizing, and simplifying the Rule's mechanisms for parental consent. For example, commenters asked the Commission to recognize additional methods of obtaining parental consent, such as by sending a text message to the parent's mobile phone number,[122] offering online payment services other than credit cards,[123] offering parental controls in gaming consoles,[124] offering a centralized parents' opt-in list,[125] and permitting electronic signatures.[126] Upon consideration of each proposal in light of the existing record, the Commission determines that the record is sufficient to justify certain proposed mechanisms, but insufficient to adopt others.

First, the Commission notes that the collection of a parent's mobile phone number to effectuate consent via an SMS text message would require a statutory change, as the COPPA statute currently permits only the collection of a parent's ''online contact'' information for such purposes, and a phone number does not fall within the statute's definition of ''online contact information,'' *i.e.,* ''an e-mail address or another substantially similar identifier that permits direct contact with a person online.'' [127] There are advantages to using SMS texting as a method of contacting the parent and obtaining consent—among them that parents typically do not have multiple mobile phone numbers, and generally have their mobile phones with them at all times. Some commenters opined that this method was as reliable as use of a credit card or fax; [128] others compared the use of SMS text messaging to the ''e-mail plus'' method permitted under the Rule's sliding scale approach to parental consent.[129] The Commission believes the more apt analogy is to the e-mail plus method in that the operator sends a notice to the parent via the parent's mobile phone number and requests opt-in consent by a return message in some form. In this way, the use of SMS text messaging for parental consent would suffer from the same inadequacies as does e-mail plus, which, as described below, the Commission proposes to eliminate. Just as with an e-mail address, there is no way to verify that the phone number provided by a child is that of the parent rather than that of the child. For these reasons, the Commission declines to add use of SMS text messaging to the enumerated list of parental consent mechanisms.

With respect to expanding the Rule to permit the use of online payment services for verifying consent in lieu of a credit card, the Commission finds that the record is insufficient to warrant adding online payment services as a consent mechanism. The Commission notes that no commenters provided any

[115] Paragraph (a) of § 312.5 reads:

(1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

[116] 15 U.S.C. 6501(9).

[117] *See* 16 CFR 312.5(b).

[118] Paragraph (b)(2) continues:

Provided that: Until the Commission otherwise determines, methods to obtain verifiable parental consent for uses of information other than the ''disclosures'' defined by § 312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory e-mail to the parent following receipt of consent; or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. Operators who use such methods must provide notice that the parent can revoke any consent given in response to the earlier e-mail.

A discussion of paragraph (b)(2) follows in Part V.C.(2).

[119] *See* Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 195, 208–71 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[120] *See* DMA (comment 17), at 10, 12; Microsoft (comment 39), at 7; Toy Industry Association, Inc. (comment 63), at 3; WiredSafety.org. (comment 68), at 18.

[121] *See, e.g.,* Boku (comment 5); DMA (comment 17), at 11–12; EchoSign, Inc. (comment 18); Entertainment Software Association (comment 20), at 7–9; Facebook (comment 22), at 2; Janine Hiller (comment 27), at 447–50; Mary Kay Hoal (comment 30); Microsoft (comment 39), at 4; MPAA (comment 42), at 12; RelyID (comment 53), at 3; TRUSTe (comment 64), at 3; Harry Valetk (comment 66), at 6; WiredSafety.org (comment 68), at 53; Susan Wittlief (comment 69).

[122] *See* BOKU (comment 5); Entertainment Software Association (comment 20), at 11–12; TRUSTe (comment 64), at 3; Harry A. Valetk (comment 66), at 6–7. *See* discussion *supra* Part IV, regarding COPPA's application to mobile communications via SMS messaging.

[123] *See* WiredSafety.org (comment 68), at 24 (noting that operators are considering employing online financial accounts such as iTunes for parental consent).

[124] *See* Entertainment Software Association (comment 20), at 9–10; Microsoft (comment 39), at 7.

[125] *See* Entertainment Software Association (comment 20), at 12; Janine Hiller (comment at 27), at 31.

[126] *See* DMA (comment 17), at 12; EchoSign (comment 18); Entertainment Software Association (comment 20), at 10; Toy Industry Association (comment 63), at 11.

[127] 15 U.S.C. 6502(12).

[128] *See, e.g.,* Entertainment Software Association (comment 20), at 11–12.

[129] *See* Boku (comment 5).

analysis of how online payment services might meet the requirements of § 312.5(b)(1); however, one commenter cautioned the Commission against embracing such technologies at this time, noting that alternative payment systems may not be as well-regulated as the credit card industry and thereby may provide even less assurance of parental consent than use of a credit card.[130] The Commission also is mindful of the potential for children's easy access to and use of alternative forms of payments (such as gift cards, debit cards, and online accounts), and would expect to see a fuller discussion of the risks presented in any future application to the Commission for recognition of these consent methods.

Several commenters asked the Commission to consider whether, and in what circumstances, parental control features in game consoles could be used to verify consent under COPPA.[131] Parental control settings often permit parents to limit or block functions such as Internet access, information sharing, chat, and interactive game play, and require parental approval before a child adds friends.[132] Parental control features appear to offer parents a great deal of control over a child's gaming experience, and, as commenters acknowledged, can serve as a *complement* to COPPA's parental consent requirements.[133] As acknowledged in the comments, at present, such systems are not designed to comply with COPPA's standards for verifiable parental consent,[134] and the record currently is insufficient for the Commission to determine whether a hypothetical parental consent mechanism would meet COPPA's verifiable parental consent standard. The Commission encourages continued exploration of the concept of using parental controls in gaming consoles (and, presumably, on a host of handheld devices) to notify parents and obtain their prior verifiable consent.

Several commenters also asked the Commission to accept electronic signatures as a form of verifiable consent.[135] The term ''electronic signature'' has many meanings, and can range from ''an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record,'' [136] to an electronic image of the stylized script associated with a person. Although the law recognizes electronic signatures for the assertion that a document has been signed,[137] electronic signatures do not necessarily confirm the underlying identity of the individual signing the document. Therefore, their use, without more indicia of reliability, is problematic in the context of COPPA's verifiable parental consent requirement.

The Entertainment Software Association proposed that the Commission incorporate a ''sign and send'' method, given that Internet-enabled mobile devices increasingly include technologies that allow a user to input data by touching or writing on the device's screen. The Commission agrees that such sign-and-send methods are substantially analogous to the print-and-send method already recognized by § 312.5(b)(2) of the Rule.[138] However, because of the proliferation of mobile devices among children and the ease with which children could sign and return an on-screen consent, the Commission is concerned that such mechanisms may not ''ensure that the person providing consent is the child's parent.'' [139] The Commission welcomes further comment on how to enhance the reliability of these convenient methods.

Several commenters urged the Commission to recognize the submission of electronically scanned versions of signed parental consent forms and the use of video verification methods.[140] The Commission agrees that now commonly-available technologies such as electronic scans and video conferencing are functionally equivalent to the written and oral methods of parental consent originally recognized by the Commission in 1999. Therefore, the Commission proposes to recognize these two methods in the proposed Rule.

The Commission also proposes allowing operators to collect a form of government-issued identification—such as a driver's license, or a segment of the parent's social security number—from the parent, and to verify the parent's identity by checking this identification against databases of such information, provided that the parent's identification is deleted by the operator from its records promptly after such verification is complete. The Commission recognizes that information such as social security number, driver's license number, or other record of government-issued identification are sensitive data.[141] In permitting operators to use government-issued identification as an approved method of parental verification, the Commission emphasizes the importance of limiting the collection of such identification information to only those segments of information needed to verify the data.[142] For example, the Commission notes that the last four digits of a person's social security number are commonly used by verification services to confirm a person's identity.[143] The requirement in the proposed Rule that operators immediately delete parents' government-issued identification information upon completion of the verification process provides further protection against operators' unnecessary retention of the information, use of the information for

[130] *See* EPIC (comment 19), at 5. (''Alternative methods may not be as heavily regulated as more traditional systems. As a result, the use of alternative methods in gaining parental consent or payment remain inadvisable, although that may change as such methods come under stronger regulation.'').

[131] *See* Entertainment Software Association (comment 20), at 4; Microsoft (comment 39), at 7.

[132] *See* Entertainment Software Association (comment 20), at 4–6.

[133] *Id.* at 6.

[134] *See id.* at 9 (''Therefore, it makes sense to consider how these tools could be harnessed for the related task of acquiring verifiable parental consent under the COPPA Rule''); Microsoft (comment 39), at 7 (describing how a hypothetical parental controls method might be structured in the future to notify a parent and obtain parental consent).

[135] *See* DMA (comment 17), at 12; EchoSign (comment 18); Entertainment Software Association (comment 20), at 10; Toy Industry Association (comment 63), at 11.

[136] *See* Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7006(5).

[137] 15 U.S.C. 7001(a).

[138] *See* Entertainment Software Association (comment 20), at 10.

[139] 16 CFR 312.5(b)(1).

[140] *See* Denise Tayloe, *supra* note 42, at 227; Phyllis B. Spaeth, Assoc. Dir., Children's Adver. Review Unit, Council of Better Bus. Bureaus, Remarks from *The ''Actual Knowledge'' Standard in Today's Online Environment* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 269 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf;* DMA (comment 17), at 11; EPIC (comment 19), at 3.

[141] The COPPA statute itself lists social security number among the items considered to be personal information. *See* 16 CFR 312.2. In other contexts, driver's licenses and social security numbers, among other things, have traditionally been considered by Commission staff to be personal, or sensitive, as well. *See* Self-Regulatory Principles for Online Behavioral Advertising, *supra* note 68, at 20, 42, 44.

[142] The use of a driver's license to verify a parent, while not specifically enumerated in the Final Rule as an approved method of parental consent, was addressed in the Statement of Basis and Purpose in connection with a discussion of the methods to verify the identity of parents who seek access to their children's personal information under § 312.6(a)(3) of the Rule. *See* 1999 Statement of Basis and Purpose, 64 FR 59888, 59905. There, the Commission concluded that the use of a driver's license was an acceptable method of parental verification.

[143] *See, e.g.,* Privo, Inc., ''Request for Safe Harbor Approval by the Federal Trade Commission for Privo, Inc.'s Privacy Assurance Program under Section 312.10 of the Children's Online Privacy Protection Rule,'' 25 (Mar. 3, 2004), available at *http://www.ftc.gov/os/2004/04/privoapp.pdf.*

other purposes, and potential compromise of such information.[144]

Finally, the Commission proposes including the term ''monetary'' to modify ''transaction'' in connection with use of a credit card to verify parental consent. This added language is intended to make clear the Commission's long-standing position that the Rule limits use of a credit card as a method of parental consent to situations involving actual monetary transactions.[145]

(2) The Sliding Scale Approach to Parental Consent

In conducting the Rule review, the Commission sought comment on whether the sliding scale set forth in § 312.5(b)(2) remains a viable approach to verifiable parental consent.[146] Under the sliding scale, an operator, when collecting personal information only for its *internal* use, may obtain verifiable parental consent through an e-mail from the parent, so long as the e-mail is coupled with an additional step. Such additional steps have included: Obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call, or sending a delayed confirmatory e-mail to the parent after receiving consent. The purpose of the additional step is to provide greater assurance that the person providing consent is, in fact, the parent.[147] This consent method is often called ''email plus.'' In contrast, for uses of personal information that involve disclosing the information to the public or third parties, the sliding scale approach requires operators to use more reliable methods of obtaining verifiable parental consent. These methods have included: Using a print-and-send form that can be faxed or mailed back to the operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.

In adopting the sliding scale approach in 1999, the Commission recognized that the e-mail plus method was not as reliable as the other enumerated methods of verifiable parental consent.[148] However, it believed that this lower cost option was acceptable as a temporary option, in place only until the Commission determined that more reliable (and affordable) consent methods had adequately developed.[149] In 2006, the Commission extended use of the sliding scale indefinitely, stating that the agency would continue to monitor technological developments and modify the Rule should an acceptable electronic consent technology develop.[150]

E-mail plus has enjoyed wide appeal among operators, who credit its simplicity.[151] Numerous commenters, including associations who represent operators, support the continued retention of this method as a low-cost means to obtain parents' consent.[152] At the same time, several commenters, including safe harbor programs and proponents of new parental consent mechanisms, challenged the method's reliability, given that operators have no real way of determining whether the e-mail address provided by a child is that of the parent, and there is no requirement that the parent's e-mail response to the operator contain any additional information providing assurance that it is from a parent.[153]

The Commission believes that the continued reliance on e-mail plus has inhibited the development of more reliable methods of obtaining verifiable parental consent.[154] In fact, the Commission notes that few, if any, new methods for obtaining parental consent have emerged since the sliding scale was last extended in 2006. The Commission limited the use of e-mail plus to instances where operators only collect children's personal information for internal uses. Although internal uses may pose a lower risk of misuse of children's personal information than the sharing or public disclosure of such information, all collections of children's information merit strong verifiable parental consent. Indeed, children's personal information is one of the most sensitive types of data collected by operators online. In light of this, therefore, the Commission believes that e-mail plus has outlived its usefulness and should no longer be a recognized approach to parental consent under the Rule.

Therefore, the Commission proposes to amend § 312.5(b)(2) so that it reads:

(2) Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or an electronic scan; permitting a parent to use a credit card in connection with a monetary transaction; having a parent call a toll-free telephone number staffed by trained personnel; having a parent connect to trained personnel via video-conference; or, verifying a parent's identity by checking a form of government-issued identification against databases of such information, *provided that* the parent's identification is deleted by the operator from its records promptly after such verification is complete.

[144] The Commission poses a question whether operators should be required to maintain a record that parental consent was obtained. *See infra* Part X., at Question 17.

[145] *See* Children's Online Privacy Protection Rule, 71 FR 13247, 13253, 13254 (Mar. 15, 2006) (retention of rule without modification) (requirement that the credit card be used in connection with a transaction provides extra reliability because parents obtain a transaction record, which is notice of the purported consent, and can withdraw consent if improperly given); Fed. Trade Comm'n., Frequently Asked Questions about the Children's Online Privacy Protection Rule, Question 33, *available at http://www.ftc.gov/privacy/coppafaqs.shtm#consent.*

[146] *See* 2010 Rule Review, *supra* note 7, at 17091.

[147] The Commission was persuaded by commenters' views that internal uses of information, such as marketing to children, presented less risk than external disclosures of the information to third parties or through public postings. *See* 1999 Statement of Basis and Purpose, 64 FR 59888, 59901. Other internal uses of children's personal information may include sweepstakes, prize promotions, child-directed fan clubs, birthday clubs, and the provision of coupons.

[148] *See id.* at 59,902 (''[E]mail alone does not satisfy the COPPA because it is easily subject to circumvention by children.'').

[149] *See id.* at 59,901 (''The Commission believes it is appropriate to balance the costs imposed by a method against the risks associated with the intended uses of the information collected. Weighing all of these factors in light of the record, the Commission is persuaded that temporary use of a ''sliding scale'' is an appropriate way to implement the requirements of the COPPA until secure electronic methods become more available and affordable'').

[150] *See* Children's Online Privacy Protection Rule, 71 FR 13247, 13255, 13254 (Mar. 15, 2006) (retention of rule without modification).

[151] *See* WiredSafety.org (comment 68), at 21 (''We all assumed [email plus] would be phased out once digital signatures became broadly used. But when new authentication models and technologies failed to gain in parental adoption, it was continued and is in broad use for one reason—it's simple'').

[152] *See* Rebecca Newton, Chief Cmty. & Safety Officer, Mind Candy, Inc., Remarks from *Emerging Parental Verification Access and Methods* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 211–13 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf* (e-mail plus is as reliable as any other method); DMA (comment 17), at 10; IAB (comment 34), at 2; Rebecca Newton (comment 46), at 3; PMA (comment 51), at 4–5; Toy Industry Association, Inc. (comment 63), at 8.

[153] *See* Privo, Inc. (comment 50), at 5 (''the presentation of a verified email is much less reliable if there is virtually no proofing or analyzing that goes on to determine who the email belongs to''); RelyId (comment 53), at 3 (''The email plus mechanism does not obtain verifiable parental consent at all. It simply does not ensure that a parent 'authorizes' anything required by the COPPA statute. The main problem with this approach is that the child can create an email address to act as the supposed parent's email address, send the email from that address, and receive the confirmatory email at that address''). *See also* Denise Tayloe, *supra* note 42, at 215–17; Phyllis Spaeth, *supra* note 140, at 215–17 (e-mail plus is very unreliable).

[154] *See* Privo (comment 50), at 4 (''[Extending the sliding scale mechanism] had the effect of giving industry absolutely no reason to create, innovate, adopt or make use of any other method for the internal use of children's personal data.'')

However, as explained below, given the proposed discontinuance of e-mail plus, and in the interest of spurring innovation in parental consent mechanisms, the Commission proposes a new process by which parties may voluntarily seek Commission approval of a particular consent mechanism, as explained below.

(3) Commission and Safe Harbor Approval of Parental Consent Mechanisms (New Paragraphs (b)(3) and (b)(4))

Under the Rule, methods to obtain verifiable parental consent ''must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.'' [155] This standard provides operators with the opportunity to craft consent mechanisms that meet this standard but otherwise are not enumerated in paragraph (b)(2) of § 312.5. Nevertheless, whether out of concern for potential liability, ease of implementation, or lack of technological developments, operators have been reluctant to utilize consent methods other than those specifically set forth in the Rule.[156] As a result, there appears to be little technical innovation in any area of parental consent.[157]

To encourage the development of new consent mechanisms, and to provide transparency regarding consent mechanisms that may be proposed, the Commission proposes to establish a process in the Rule through which parties may, on a voluntary basis, seek Commission approval of a particular consent mechanism. Applicants who seek such approval would be required to present a detailed description of the proposed parental consent mechanism, together with an analysis of how the mechanism meets the requirements of § 312.5(b)(1) of the Rule. The Commission would publish the application in the **Federal Register** for public comment, and approve or deny the applicant's request in writing within 180 days of the filing of the request.

The Commission believes that this new approval process, aided by public input, will allow the Commission to give careful consideration, on a case-by-case basis, to new forms of consent as they develop in the marketplace. The new process also will increase transparency by publicizing approvals or rejections of particular consent mechanisms and should encourage operators who may previously have been tentative about exploring technological advancements to come forward and share them with the Commission and the public.

Several commenters urged the Commission to permit Commission-approved safe harbor programs to serve as laboratories for developing new consent mechanisms.[158] The Commission agrees that establishing such a system may aid the pace of development in this area, and given the strengthened oversight of safe harbor programs described in Part F. below, will not result in the loosening of COPPA's standards for parental consent. Therefore, the Commission proposes adding a provision to the Rule stating that operators participating in a Commission-approved safe harbor program may use any parental consent mechanism deemed by the safe harbor program to meet the general consent standard set forth in § 312.5(b)(1).

Therefore, the Commission proposes to amend § 312.5(b) to add two new paragraphs, (3) and (4) that read:

(3) *Commission approval of parental consent mechanisms.* Interested parties may file written requests for Commission approval of parental consent mechanisms not currently enumerated in paragraph (b)(2). To be considered for approval, parties must provide a detailed description of the proposed parental consent mechanism, together with an analysis of how the mechanism meets paragraph (b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the request. The Commission shall issue a written determination within 180 days of the filing of the request.

(4) *Safe harbor approval of parental consent mechanisms.* A safe harbor program approved by the Commission under § 312.11 may approve its member operators' use of a parental consent mechanism not currently enumerated in paragraph (b)(2) where the safe harbor program determines that such parental consent mechanism meets the requirements of paragraph (b)(1).

(4) Exceptions to Prior Parental Consent (Paragraph (c))

Congress anticipated that certain situations would arise in which it was not necessary or practical for an operator to obtain consent from parents prior to engaging with children online. Accordingly, the COPPA statute and Rule contain five scenarios in which an operator may collect limited pieces of personal information (*i.e.,* name and online contact information) from children prior to, or sometimes without, obtaining consent.[159] These exceptions permit operators to communicate with the child to: initiate the parental consent process, respond to the child once or multiple times, and protect the child's safety or the integrity of the Web site.[160]

The Commission proposes adding one new exception to parental consent in order to give operators the option to collect a parent's online contact information for the purpose of providing notice to or updating the parent about a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information.[161] The parent's online contact information may not be used for any other purpose, disclosed, or combined with any other information collected from the child. The Commission believes that collecting a parent's online contact information for the limited purpose of notifying the parent of a child's online activities in a site or service that does not otherwise collect personal information is reasonable and should be encouraged.[162]

Therefore, the Commission proposes to amend § 312.5(c) to add a new subsection, § 312.4(c)(2), that reads:

Where the sole purpose of collecting a parent's online contact information is to provide notice to, and update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used

[155] *See* 16 CFR 312.5(b)(1).

[156] The June 2, 2010 Roundtable and the public comments reflect a tension between operators' desire for new methods of parental verification and their hesitation to adopt consent mechanisms other than those specifically enumerated in the Rule. *See* Remarks from Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 226–27 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/vCOPPARuleReview_Transcript.pdf;* CDT (comment 8), at 3 (''innovation in developing procedures to obtain parental consent has been limited as websites choose to use the methods suggested by the FTC out of fear that a more innovative method could lead to liability'').

[157] *See* Children's Online Privacy Protection Rule, 71 FR 13247, 13250 (Mar. 15, 2006) (retention of rule without modification).

[158] *See* MPAA (comment 42), at 12; Rebecca Newton (comment 46), at 2; Privo (comment 50), at 2; PMA (comment 51), at 5; Berin Szoka (comment 59), Szoka Responses to Questions for the Record, at 56; TRUSTe (comment 64), at 3). *See also generally* WiredSafety.org (comment 68), at 31–32.

[159] *See* 15 U.S.C. 6503(b)(2); 16 CFR 315.5(c).

[160] The Act and the Rule currently permit the collection of a parent's e-mail address for the limited purposes of: (1) obtaining verified parental consent; (2) providing parents with a right to opt-out of an operator's use of a child's e-mail address for multiple contacts of the child; and (3) to protect a child's safety on a Web site or online service. *See* 15 U.S.C. 6503(b)(2); 16 CFR 312.5(c)(1), (2), and (4).

[161] At least a few online virtual worlds directed to very young children already follow this practice. Because the Rule does not currently include such an exception, these operators technically are in violation of COPPA.

[162] This proposed new exception is mirrored in the proposed revisions to the direct notice requirement of § 312.4. *See supra* Part V.B.(2).

or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2).

The Commission also proposes minor technical corrections to the Rule's current exceptions provisions. First, in § 312.4(c)(1), the Rule permits an operator to collect ''the name or online contact information of a parent or child'' to be used for the sole purpose of obtaining parental consent. The clear intent of this provision is to allow for the collection of the *parent's* online contact information in order to reach the parent to initiate the consent process. Therefore, the Commission proposes to amend § 312.5(c)(1) to clarify the language so that it reads:

Where the sole purpose of collecting a parent's online contact information and the name of the child or the parent is to provide notice and obtain parental consent under § 312.4(c)(1). If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records.

Second, § 312.5(c)(3) provides that an operator may notify a parent of the collection of a child's online contact information for multiple contacts via e-mail or postal address. The Commission proposes to eliminate the option of collecting a parent's postal address for notification purposes. The collection of postal address is not provided for anywhere else in the Rule's notice requirements, and is clearly outmoded at this time. Therefore, the Commission proposes to amend § 312.5(c)(3), now renumbered as § 312.5(4), so that it reads:

Where the sole purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered.

Finally, in various places in § 312.5(c), the Commission proposes to emphasize that the collection of online contact information is to be used for the limited purpose articulated within each paragraph, and not for any other purpose.

Therefore, the Commission proposes to amend § 312.5(c) so that it reads in its entirety:

(c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use, or disclosure of personal information from a child *except* as set forth in this paragraph:

(1) Where the sole purpose of collecting a parent's online contact information and the name of the child or the parent is to provide notice and obtain parental consent under § 312.4(c)(1). If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the sole purpose of collecting a parent's online contact information is to provide notice to, and update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);

(3) Where the sole purpose of collecting a child's online contact information is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request; [163]

(4) Where the sole purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

(5) Where the sole purpose of collecting a child's name, and a child's and a parent's online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as described in § 312.4(c)(4);

(6) Where the sole purpose of collecting a child's name and online contact information is to: (i) Protect the security or integrity of its Web site or online service; (ii) take precautions against liability; (iii) respond to judicial process; or (iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; and, where such information is not be used for any other purpose.[164]

D. Confidentiality, Security, and Integrity of Personal Information Collected From Children (16 CFR 312.8)

The Commission proposes to amend § 312.8 to strengthen the provision for maintaining the confidentiality, security, and integrity of personal information. To accomplish this, the Commission proposes adding a requirement that operators take reasonable measures to ensure that any service provider or third party to whom they release children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information.

COPPA requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children, but is silent on the data security obligations of third parties.[165] The COPPA Rule mirrors the statutory language but also requires covered operators to disclose in their online privacy policies whether third parties to whom personal information is disclosed have agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator.[166]

Under the Commission's proposed amendment to § 312.8, an operator must take reasonable measures to ensure that any service provider or third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information. This provision is intended to address security issues surrounding business-to-business releases of data.[167]

The proposed requirement that operators must take reasonable measures to ensure that third parties and service providers keep the shared information confidential and secure is a logical and necessary extension of the statutory requirement that operators themselves keep such information confidential and secure. Therefore, the Commission proposes to amend § 312.8 to add a second sentence so that it reads:

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must take reasonable measures

[163] This ''one time use'' exception does not require an operator to provide notice to a parent.

[164] This exception does not require an operator to provide notice to a parent.

[165] 15 U.S.C. 6503(b)(1)(D).

[166] *See* 16 CFR 312.4(b)(2)(iv) and 312.8.

[167] *See supra* Part V.A.(3).

to ensure that any service provider or any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information.

E. Data Retention and Deletion Requirements (Proposed 16 CFR 312.10)

As noted above, COPPA authorizes the Commission to promulgate regulations requiring operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.[168] Deleting unneeded information is an integral part of any reasonable data security strategy. Accordingly, the Commission proposes adding a new data retention and deletion provision to become § 312.10.[169]

The proposed provision states that operators shall retain children's personal information for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. In addition, it states that an operator must delete such information by taking reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

Although the current Rule does not contain a data retention and deletion requirement, the Commission has long encouraged such practices. According to its 1999 Notice of Proposed Rulemaking: ''[t]he Commission encourages operators to establish reasonable procedures for the destruction of personal information once it is no longer necessary for the fulfillment of the purpose for which it was collected. Timely elimination of data is the ultimate protection against misuse or unauthorized disclosure.'' [170] More recently, the Commission has testified that companies should adopt a ''privacy by design'' approach, including by building data retention and disposal protections into their everyday business practices.[171]

The proposed new data retention and deletion provision (§ 312.10) reads:

An operator of a Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

F. Safe Harbors (Current 16 CFR 312.10, Proposed 16 CFR 312.11)

The COPPA statute established a ''safe harbor'' for participants in Commission-approved COPPA self-regulatory programs.[172] With the safe harbor provision, Congress intended to encourage industry members and other groups to develop their own COPPA oversight programs, thereby promoting efficiency and flexibility in complying with COPPA's substantive provisions.[173] COPPA's safe harbor provision also was intended to reward operators' good faith efforts to comply with COPPA. The Rule therefore provides that operators fully complying with an approved safe harbor program will be A ''deemed to be in compliance'' with the Rule for purposes of enforcement. In lieu of formal enforcement actions, such operators instead are subject first to the safe harbor program's own review and disciplinary procedures.[174]

Current § 312.10 of the Rule sets forth the criteria the Commission uses to approve applications for safe harbor status under COPPA. First, the self-regulatory program must contain guidelines that protect children's online privacy to the same or greater extent as the Rule and ensure that each potential participant complies with these guidelines.[175] Second, the program must monitor the participant's practices on an ongoing basis to ensure that the participant continues to comply with both the program's guidelines and the participant's own privacy notices.[176] Finally, the safe harbor program must contain effective incentive mechanisms to ensure operators' compliance with program guidelines.[177]

Several comments supported strengthening the Commission's oversight of participating safe harbor programs. TRUSTe, a Commission-approved COPPA safe harbor program, asked the Commission to develop better criteria for the approval of safe harbor programs that reflect the principles of reliability, accountability, transparency, and sustainability.[178] Another commenter urged the Commission regularly to audit the Commission-approved COPPA safe harbor programs to ensure compliance with the Rule.[179] The Commission finds merit in the calls to strengthen the Safe Harbor provisions of the Rule, and accordingly, proposes three substantive changes: requiring that applicants seeking Commission approval of self-regulatory guidelines submit comprehensive information about their capability to run an effective safe harbor program; establishing more rigorous baseline oversight by Commission-approved safe harbor programs of their members; and, requiring Commission-approved safe harbor programs to submit periodic reports to the Commission. The Commission also proposes several structural and linguistic changes to the Safe Harbors section to increase the Rule's clarity.

(1) Criteria for Approval of Self-Regulatory Guidelines (Paragraph (b))

Paragraph (b) of the Rule's safe harbor provisions set forth the criteria the Commission will use to review an application for safe harbor status. Among other things, safe harbor applicants must demonstrate that they have an effective mandatory mechanism for the independent assessment of their members' compliance. The Rule outlines possible, non-exclusive, methods applicants may employ to conduct this independent review,

[168] 15 U.S.C. 6503(b)(1)(D).

[169] The Commission proposes moving the current § 312.10 (Safe Harbors) to § 312.11, and deleting as obsolete the current § 312.11 (Rulemaking review).

[170] *See* Children's Online Privacy Protection Rule, Notice of Proposed Rulemaking, 64 FR 22750, 22758–59 (Apr. 27, 1999), *available at http://www.ftc.gov/os/fedreg/1999/april/990427childrensonlineprivacy.pdf.*

[171] *See, e.g., Internet Privacy: The Views of the FTC, the FCC, and NTIA: Hearing Before the Subcomms. on Commerce, Manufacturing, & Trade and Communications & Technology of the H.R. Comm. on Energy and Commerce,* 112th Cong., at 14 (2011) (Statement of Edith Ramirez, Commissioner, Federal Trade Commission), *available at http://www.ftc.gov/os/testimony/110714internetprivacytestimony.pdf; Privacy and Data Security: Protecting Consumers in the Modern World: Hearing Before the S. Comm. on Commerce, Science & Transportation,* 112th Cong., at 12 (2011) (Statement of Julie Brill, Commissioner, Federal Trade Commission), *available at http://www.ftc.gov/os/testimony/110629privacytestimonybrill.pdf; Data Security: Hearing Before the Subcomm. on Commerce, Manufacturing & Trade, H.R. Comm. on Energy and Commerce,* 112th Cong., at 9 (2011) (Statement of Edith Ramirez, Commissioner, Federal Trade Commission), *available at http://www.ftc.gov/os/testimony/110615datasecurityhouse.pdf. See also* Protecting Consumer Privacy in an Era of Rapid Change, *supra* note 23, at 44.

[172] *See* 15 U.S.C. 6503.

[173] *See* 1999 Statement of Basis and Purpose, 64 FR 59888, 59906 (''[T]his section serves as an incentive for industry self-regulation; by allowing flexibility in the development of self-regulatory guidelines, it ensures that the protections afforded children under this Rule are implemented in a manner that takes into account industry specific concerns and technological developments'').

[174] *See* 16 CFR 312.10(a) and (b)(4).

[175] *See* 16 CFR 312.10(b)(1).

[176] *See* 16 CFR 312.10(b)(2)(i)–(iv).

[177] *See* 16 CFR 312.10(b)(3)(i)–(v). Effective incentives include mandatory public reporting of disciplinary action taken against participants by the safe harbor program; consumer redress; voluntary payments to the United States Treasury; referral of violators to the Commission; or any other equally effective incentive. *Id.*

[178] *See* TRUSTe (comment 64), at 6.

[179] *See* Harry A. Valetk (comment 66), at 4.

including periodic comprehensive or random checks of members' information practices, seeding members' databases if coupled with random or periodic checks,[180] or ''any other equally effective independent assessment mechanism.'' [181]

The Commission proposes maintaining the standard that safe harbor programs implement ''an effective, mandatory mechanism for the independent assessment of subject operators' compliance.'' Rather than provide a set of alternative mechanisms that safe harbor programs can use to carry out this requirement, the Commission proposes to mandate that, at a minimum, safe harbor programs conduct annual, comprehensive reviews of each of their members' information practices. In the Commission's view, this baseline benchmark for oversight will improve the accountability and transparency of Commission-approved COPPA safe harbor programs.

Therefore, the Commission proposes to amend paragraph (b)(2) of the safe harbor provisions of the Rule to read:

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator's information policies, practices, and representations. The assessment mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program.

(2) Request for Commission Approval of Self-Regulatory Program Guidelines (Paragraph (c))

Paragraph (c) of the Rule's current safe harbor provision sets forth the application requirements for safe harbor status. Among other things, an applicant must include the full text of the guidelines for which approval is sought and any accompanying commentary, a statement explaining how the applicant's proposed self-regulatory guidelines meet COPPA, and how the independent assessment mechanism and effective incentives for subject operators' compliance (required under paragraphs (b)(2) and (3)) provide effective enforcement of COPPA.[182]

To enhance the reliability and sustainability of programs granted safe harbor status,[183] the Commission proposes adding a requirement that program applicants include with their application a detailed explanation of their business model and the technological capabilities and mechanisms they will use for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program. This requirement will enable the Commission to better evaluate the qualifications of a safe harbor program applicant.

Therefore, the Commission proposes adding a new requirement to paragraph (c) (paragraph (c)(1)) that reads:

(c) *Request for Commission approval of self-regulatory program guidelines.* To obtain Commission approval of self-regulatory program guidelines, proposed safe harbor programs must file a request for such approval. A request shall be accompanied by the following:

(1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program.[184]

(3) Safe Harbor Reporting and Recordkeeping Requirements (Paragraph (d))

Paragraph (d) of the current safe harbor provision requires Commission-approved safe harbor programs to maintain records of consumer complaints, disciplinary actions, and the results of the independent assessments required under paragraph (b)(2) for a period of at least three years. Such records shall be made available to the Commission for inspection and copying at the Commission's request.[185]

One commenter urged the Commission to make greater use of its inspection powers under paragraph (d) to audit safe harbor programs in order to ''give the Commission a better understanding of actual marketplace practices, and inspire commercial operators to improve online practices.'' [186] The Institute for Public Representation went further, asking the Commission to ''assess the effectiveness of the safe harbor programs by requiring annual reports about their enforcement efforts.'' [187] The Commission believes that instituting a periodic reporting requirement, in addition to retaining the right to access program records, will better ensure that all safe harbor programs maintain sufficient records and that the Commission is routinely apprised of key information about approved safe harbor programs and their members. Therefore, the Commission proposes modifying paragraph (d) to require, within one year of the effective date of the Final Rule amendments, and every eighteen months thereafter, the submission of reports to the Commission containing, at a minimum, the results of an independent audit described in revised paragraph (b)(2), and the reporting of any disciplinary action taken against any member operator within the relevant reporting period.

Therefore, the Commission proposes modifying paragraph (d) to read:

(d) *Reporting and recordkeeping requirements.* Approved safe harbor programs shall:

(1) Within one year after the effective date of the Final Rule amendments, and every eighteen months thereafter, submit a report to the Commission containing, at a minimum, the results of the independent assessment conducted under paragraph (b)(2), a description of any disciplinary action taken against any subject operator under paragraph (b)(3), and a description of any approvals of member operators' use of parental consent mechanism, pursuant to § 312.5(b)(4);

(2) Promptly respond to requests by the Commission for additional information; and,

(3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:

(i) Consumer complaints alleging violations of the guidelines by subject operators;

(ii) Records of disciplinary actions taken against subject operators; and

(iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2).

(4) Revisions to Increase the Clarity of the Safe Harbor Provisions

The Commission also proposes a general reorganization of the safe harbor provision to provide a clearer roadmap of the requirements for obtaining and maintaining safe harbor status. This reorganization includes consolidating into separate paragraphs: the criteria for approval of self-regulatory program guidelines; the application requirements for Commission approval; reporting and recordkeeping requirements; post-approval modifications to self-regulatory program guidelines; and revocation of approval of self-regulatory program guidelines.[188] In addition, the

[180] ''Seeding'' a participant's database means registering as a child on the Web site or online service and then monitoring the site or service to ensure that it complies with the Rule's requirements.

[181] *See* 16 CFR 312.10(b)(2).

[182] *See* 16 CFR 312.10(c).

[183] *See* TRUSTe (comment 64), at 6.

[184] The Commission will consider applicants' requests that certain materials submitted in connection with an application for safe harbor should receive confidential treatment. *See* FTC Operating Manual, 15.5.1, and 15.5.2.

[185] *See* 16 CFR 312.10(d).

[186] *See* Harry A. Valetk (comment 66), at 4.

[187] *See* Institute for Public Representation (comment 33), at 37.

[188] The Commission also proposes deleting the requirement that the Commission must determine ''in fact'' that approved self-regulatory program guidelines or their implementation do not meet the

Continued

Commission proposes adding language to the revocation of approval paragraph to require currently approved safe harbor programs to propose modifications to their guidelines within 60 days of publication of the Final Rule amendments in order to come into compliance or face revocation.[189] Finally, the proposed revision would move to the end of this section the Rule's provision on the effect of an operators' participation in a safe harbor program.

VI. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After evaluating the comments, the Commission will determine whether to issue specific amendments.

Comments should refer to ''COPPA Rule Review: FTC File No. P104503'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* Comments must be received on or before the deadline specified above in the **DATES** section in order to considered by the Commission.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 28, 2011. Write ''COPPA Rule Review, 16 CFR Part 312, Project No. P104503'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[190] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/2011copparulereview,* by following the instructions on the web-based form. If this document appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''COPPA Rule Review, 16 CFR part 312, Project No. P104503'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex E), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 28, 2011.[191] You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on any proposed recordkeeping, disclosure, or reporting requirements subject to review under the Paperwork Reduction Act should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW.,Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.,* requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with the proposed Rule, and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final Rule.[192] The Commission is not required to make such analyses if a Rule would not have such an economic effect.[193]

Although, as described below, the Commission does not anticipate that the proposed changes to the Rule will result in substantially more Web sites and online services being subject to the Rule, it will result in greater disclosure, reporting, and compliance

requirements of the Rule's safe harbor provisions prior to revoking their approval.

[189] Therefore, the Commission proposes to amend paragraph (f) of the safe harbor provisions of the Rule to read:

(f) *Revocation of approval of self-regulatory program guidelines.* The Commission reserves the right to revoke any approval granted under this Section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, within 60 days of publication of the Final Rule amendments, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.

[190] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[191] Questions for the public regarding proposed revisions to the Rule are found at Part X., *infra.*

[192] *See* 5 U.S.C. 603–04.

[193] *See* 5 U.S.C. 605.

responsibilities for all entities covered by the Rule. The Commission believes that a number of operators of Web sites and online services potentially affected by the revisions are small entities as defined by the RFA. It is unclear whether the proposed amended Rule will have a significant economic impact on these small entities. Thus, to obtain more information about the impact of the proposed Rule on small entities, the Commission has decided to publish the following IRFA pursuant to the RFA and to request public comment on the impact on small businesses of its proposed amended Rule.

A. Description of the Reasons That Agency Action Is Being Considered

As described in Part I above, the Commission commenced a voluntary review of the COPPA Rule in early April 2010, seeking public comment on whether technological changes to the online environment warranted any changes to the Rule.[194] After careful review of the comments received, the Commission concludes that there is a need to update certain Rule provisions. Therefore, it proposes modifications to the Rule in the following five areas: Definitions, Notice, Parental Consent, Confidentiality and Security of Children's Personal Information, and Safe Harbor Programs. In addition, the Commission proposes adding a new Section to the Rule regarding data retention and deletion.

B. Succinct Statement of the Objectives of, and Legal Basis for, the Revised Proposed Rule

The objectives of the amendments are to update the Rule to ensure that children's online privacy continues to be protected, as directed by Congress, even as new online technologies evolve, and to clarify existing obligations for operators under the Rule. The legal basis for the proposed amendments is the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.*

C. Description and Estimate of the Number of Small Entities to Which the Revised Proposed Rule Will Apply

The proposed amendments to the Rule will affect operators of Web sites and online services directed to children, as well as those operators that have actual knowledge that they are collecting personal information from children. The proposed Rule amendments will impose costs on entities that are ''operators'' under the Rule.

The Commission staff is unaware of any empirical evidence concerning the number of operators subject to the Rule. However, based on our compliance monitoring efforts in the area of children's privacy, data received by the Commission in connection with preparing its most recent studies of food marketing to children and marketing of violent entertainment to children, and the recent growth in interactive mobile applications that may be directed to children, the Commission staff estimates that approximately 2,000 operators may be subject to the Rule's requirements.

Under the Small Business Size Standards issued by the Small Business Administration, ''Internet publishing and broadcasting and web search portals'' qualify as small businesses if they have fewer than 500 employees.[195] The Commission staff estimates that approximately 80% of operators potentially subject to the Rule qualify as small entities. The Commission staff bases this estimate on its experience in this area, which includes its law enforcement activities, oversight of safe harbor programs, conducting relevant workshops, and discussions with industry and privacy professionals. The Commission seeks comment and information with regard to the estimated number or nature of small business entities on which the proposed Rule would have a significant economic impact.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amended Rule would impose reporting, recordkeeping, and other compliance requirements within the meaning of the Paperwork Reduction Act, as set forth in Part VIII. of this Notice of Proposed Rulemaking. Therefore, the Commission is submitting the proposed requirements to OMB for review before issuing a final rule.

The proposed Rule likely would increase the recordkeeping, reporting, and other compliance requirements for covered operators. In particular, the proposed requirement that the direct notice to parents include more specific details about an operator's information collection practices, pursuant to a revised § 312.4 (Notice), would impose a one-time cost on operators. The Commission's proposed elimination of the sliding scale for acceptable mechanisms of obtaining parental consent, pursuant to a revised § 312.5 (consent mechanisms for verifiable parental consent), would require those operators who previously used the e-mail plus method to now use a more reliable method for obtaining parental consent. The addition of proposed language in § 312.8 (confidentiality, security, and integrity of personal information collected from children) would require operators to take reasonable measures to ensure that service providers and third parties to whom they release children's personal information have in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information. Finally, the proposed Rule contains additional reporting requirements for entities voluntarily seeking approval to be a COPPA safe harbor self-regulatory program, and additional reporting and recordkeeping requirements for all Commission-approved safe harbor programs. Each of these proposed improvements to the Rule may entail some added cost burden to operators, including those that qualify as small entities.

The estimated burden imposed by these proposed amendments is discussed in the Paperwork Reduction Act section of this document, and there should be no difference in that burden as applied to small businesses. While the Rule's compliance obligations apply equally to all entities subject to the Rule, it is unclear whether the economic burden on small entities will be the same as or greater than the burden on other entities. That determination would depend upon a particular entity's compliance costs, some of which may be largely fixed for all entities (*e.g.,* Web site programming) and others variable (*e.g.,* Safe Harbor participation), and the entity's income or profit from operation of the Web site itself (*e.g.,* membership fees) or related sources (*e.g.,* revenue from marketing to children through the site). As explained in the Paperwork Reduction Act section, in order to comply with the rule's requirements, Web site operators will require the professional skills of legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers) personnel. As explained earlier, the Commission staff estimates that there are approximately 2,000 Web site or online services that would qualify as operators under the proposed Rule, and that approximately 80% of such operators would qualify as small entities under the SBA's Small Business Size standards. The Commission invites

[194] *See* 75 FR 17089 (Apr. 5, 2010).

[195] *See* U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

comment and information on these issues.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. The Commission invites comment and information on this issue.

F. Description of Any Significant Alternatives to the Proposed Rule

In drafting the proposed amended Rule, the Commission has made every effort to avoid unduly burdensome requirements for entities. The Commission believes that the proposed amendments are necessary in order to continue to protect children's online privacy in accordance with the purposes of COPPA. For each of the proposed amendments, the Commission has attempted to tailor the provision to any concerns evidenced by the record to date. On balance, the Commission believes that the benefits to children and their parents outweigh the costs of implementation to industry.

The Commission considered, but decided against, providing an exemption for small businesses. The primary purpose of COPPA is to protect children's online privacy by requiring verifiable parental consent before an operator collects personal information. The record and the Commission's enforcement experience have shown that the threats to children's privacy are just as great, if not greater, from small businesses or even individuals than from large businesses.[196] Accordingly, any exemption for small businesses would undermine the very purpose of the Statute and Rule.

Nonetheless, the Commission has taken care in developing the proposed amendments to set performance standards that will establish the objective results that must be achieved by regulated entities, but do not mandate a particular technology that must be employed in achieving these objectives. For example, the Commission has retained the standard that verifiable parental consent may be obtained via a means reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent. The proposed new requirements for maintaining the security of children's personal information and deleting such information when no longer needed do not mandate any specific means to accomplish those objectives. The Commission also proposes to make it easier for operators to avoid the collection of children's personal information by adopting a ''reasonable measures'' standard enabling operators to use competent filtering technologies to prevent children's public disclosure of information.

The Commission seeks comments on ways in which the Rule could be modified to reduce any costs or burdens for small entities.

VIII. Paperwork Reduction Act

The existing Rule contains recordkeeping, disclosure, and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through July 31, 2014 (OMB Control No. 3084–0117).

The proposed amendments to the COPPA Rule would change the definition of ''personal information,'' potentially increasing the number of operators subject to the Rule. The proposed amendments also would eliminate e-mail plus as an acceptable method for obtaining parental consent, require operators to provide parents with a more detailed direct notice, and increase reporting and recordkeeping requirements for Commission-approved safe harbor programs. Accordingly, the Commission is providing PRA burden estimates for the proposed amendments, which are set forth below.

The Commission invites comments on: (1) 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; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Estimated Additional Annual Hours Burden

A. Number of Respondents

As noted in the Regulatory Flexibility Section of this NPR, Commission staff estimates that there are currently approximately 2,000 operators subject to the Rule. The Commission believes that the number of operators subject to the Rule's requirements will not change significantly as a result of the proposed revisions to the definition of personal information. Even though altering the definition of personal information potentially expands the pool of covered operators, other proposed changes in the Rule should offset much of this potential expansion. Specifically, these offsets include provisions allowing the use of persistent identifiers to support the internal operations of a Web site or online service, and permitting the use of reasonable measures such as automated filtering to strip out personal information before posting children's content in interactive venues. The Commission also anticipates many of these potentially new operators will make adjustments to their information collection practices so that they will not be collecting personal information from children, as defined by the Rule.

For this burden analysis, the Commission staff retains its recently published estimate of 100 new operators per year[197] for a prospective three-year PRA clearance period.[198] The Commission staff also retains its estimate that no more than one additional safe harbor applicant will submit a request within the next three years.

B. Recordkeeping Hours

The proposed Rule amendments do not impose any new significant recordkeeping requirements on operators. The proposed amendments do impose additional recordkeeping requirements on safe harbor programs, however. Commission staff estimates that in the year of implementation (''Year 1''), the four existing safe harbor programs will require no more than 100 hours to set up and implement a new recordkeeping system to comply with the proposed amendments.[199] In later

[196] *See, e.g., United States* v. *W3 Innovations, LLC,* No. CV–11–03958 (N.D. Cal., filed Aug. 12, 2011); *United States* v. *Industrious Kid, Inc.,* No. CV–08–0639 (N.D. Cal., filed Jan. 28, 2008); *United States* v. *Xanga.com, Inc.,* No. 06–CIV–6853 (S.D.N.Y., filed Sept. 7, 2006); *United States* v. *Bonzi Software, Inc.,* No. CV–04–1048 (C.D. Cal., filed Feb. 17, 2004); *United States* v. *Looksmart, Ltd.,* Civil Action No. 01–605–A (E.D. Va., filed Apr. 18, 2001); *United States* v. *Bigmailbox.Com, Inc.,* Civil Action No. 01–606–B (E.D. Va., filed Apr. 18, 2001).

[197] *See* Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension, 76 FR 31334 (May 31, 2011) (''FTC COPPA PRA Extension'').

[198] Under the PRA, agencies may seek a maximum of three years' clearance for a collection of information. 44 U.S.C. 3507(g). Recordkeeping, disclosure, and reporting requirements are all forms of information collection. *See* 44 U.S.C. 3502(3).

[199] *See, e.g.,* Telemarketing Sales Rule (''TSR''), Notice of Proposed Rulemaking, 74 FR 41988,

years, once compliant systems are established, the burden for these entities should be negligible—no more than one hour each year.[200] Thus, annualized burden per year for a prospective three-year clearance for existing safe harbor programs is 34 hours per safe harbor program (100 + 1 + 1 = 102 hours; 102 hours) 3 = 34 hour per year). Accordingly, for the four existing safe harbor programs, cumulative annualized recordkeeping burden would be 136 hours.

For a new entrant, the initial burden of establishing recordkeeping systems and the burden of maintenance thereafter should be no more than for the existing safe harbors. Assuming, as noted above, that there will be one new safe harbor entrant per a given three-year PRA clearance period, the incremental annualized recordkeeping burden for the entrant under the proposed amendments would be 34 hours.

Thus, cumulative annualized recordkeeping burden for new and existing safe harbor applicants would be 170 hours.

C. Disclosure Hours

(1) New Operators' Disclosure Burden

Under the existing OMB clearance for the Rule, the Commission staff has already accounted for the time that new operators will spend to craft a privacy policy (approximately 60 hours per operator), design mechanisms to provide the required online privacy notice and, where applicable, direct notice to parents in order to obtain verifiable consent. The proposed amendments should no more than minimally add to, if at all, the time required to accomplish this task because their effect primarily is to transfer required information from the privacy policy to the direct notice.

(2) Existing Operators' Disclosure Burden

In Year 1, operators would have a one-time burden to re-design their existing privacy policies and direct notice procedures that would not carry over to the second and third years of prospective PRA clearance. In addition, existing operators that currently use the e-mail plus method would incur burden in Year 1 for converting to a more reliable method of parental verification. Commission staff believes that an existing operator's time to make these changes would be no more than that estimated for a new entrant to craft a privacy policy for the first time, *i.e.,* 60 hours. Annualized over three years of PRA clearance, this amounts to 20 hours ((60 hours + 0 + 0)) 3) per year. Aggregated for the 2,000 existing operators, annualized disclosure burden would be 40,000 hours.

D. Reporting Hours

The FTC previously has estimated that a prospective safe harbor organization requires 265 hours to prepare and submit its safe harbor proposal.[201] The proposed Rule amendments, however, require a safe harbor applicant to submit a more detailed proposal than what the current Rule mandates. Existing safe harbor programs will thus need to submit a revised application and new safe harbor applicants will have to provide greater detail than they would under the current Rule. The FTC estimates this added information would entail approximately 60 additional hours for safe harbors to prepare. Accordingly, the aggregate incremental burden for this added one-time preparation is 300 hours (60 hours × 5 safe harbors) or, annualized for an average single year per three-year PRA clearance, 100 hours.

The proposed amendments to the Rule require safe harbor programs to audit their members at least annually and to submit periodic reports to the Commission on the results of their audits of members. As such, this will increase currently cleared burden estimates pertaining to safe harbor applicants. The burden for conducting member audits and preparing these reports will likely vary for each safe harbor program depending on the number of members. The Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for five safe harbor programs, this amounts to an increased disclosure burden of 500 hours per year. Accordingly, cumulative yearly reporting burden for five safe harbor applicants to provide the added information proposed and to conduct audits and prepare reports is 600 hours.

E. Labor Costs

(1) Recordkeeping

Based on the above estimate of 170 hours for existing and new safe harbor programs, annualized for an average single year per three-year PRA clearance, and applying a skilled labor rate of $26/hour,[202] associated labor costs are $4,420 per year.

(2) Disclosure

The Commission staff assumes that the time spent on compliance for operators would be apportioned five to one between legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers) personnel.[203] As noted above, the Commission staff estimates a total of 40,000 hours disclosure burden, annualized, for 2,000 existing operators. Thus, apportioned five to one, this amounts to, rounded, 33,333 hours of legal, and 6,667 hours of technical, assistance. Applying hourly rates of $150 and $36, respectively, for these personnel categories,[204] associated labor costs would total approximately $5,240,000.

(3) Reporting

The Commission staff assumes that the task to prepare safe harbor program applications will be performed primarily by lawyers at a mean labor rate of $150 an hour. Thus, applied to an assumed industry total of 500 hours per year for this task, associated yearly labor costs would total $75,000.

The Commission staff assumes periodic reports will be prepared by compliance officers, at a labor rate of $28.[205] Applied to an assumed industry total of 500 hours per year for this task, associated yearly labor costs would be $14,000.

Cumulatively, labor costs for the above-noted reporting requirements total approximately $89,000 per year.

F. Non-Labor/Capital Costs

Because both operators and safe harbor programs will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the proposed amendments to the Rule

42013 (Aug. 19, 2009). Arguably, this estimate conservatively errs upward in the instant context.

[200] *Id.*

[201] For PRA purposes, annualized over the course of three years of clearance, this averages roughly 100 hours per year given that the 265 hours is a one-time, not recurring, expenditure of time for an applicant.

[202] This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the Bureau of Labor Statistics National Compensation Survey: Occupational Earnings in the United States, 2010, at Table 3, *available at http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf* (''National Compensation Survey Table 3'').

[203] *See* FTC COPPA PRA Extension, 76 FR at 31335 n. 1.

[204] The estimated rate of $150 per hour is roughly midway between Bureau of Labor Statistics (BLS) mean hourly wages for lawyers (approximately $54) in the most recent whole-year data (2010) available online and what Commission staff believes more generally reflects hourly attorney costs ($250) associated with Commission information collection activities. The $36 estimate of mean hourly wages for computer programmers also is based on the most recent whole-year BLS data. *See* National Compensation Survey Table 3.

[205] *See* National Compensation Survey Table 3.

should not impose any additional capital or other non-labor costs.

IX. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

X. Questions for the Proposed Revisions to the Rule

The Commission is seeking comment on various aspects of the proposed Rule, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence, upon which those comments are based.

General Questions

1. Please provide comment on any or all of the provisions in the proposed Rule. For each provision commented on please describe (a) The impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives.

Definitions (§ 312.2)

2. Do the changes to the definition of ''collects or collection'' sufficiently encompass all the ways in which information can be collected online from children?

3. Does the ''reasonable measures'' standard articulated in the proposed definition of ''collects or collection'' adequately protect children while providing sufficient guidance to operators?

4. Are there identifiers that the Commission should consider adding to the list of ''online contact information''?

5. Proposed § 312.2 would define personal information to include a ''screen or user name.''

a. What would be the impact of including ''screen or user name'' in the definition of personal information?

b. Is the limitation ''used for functions other than or in addition to support for the internal operations of the Web site or online service'' sufficiently clear to provide notice of the circumstances under which screen or user name is covered by the Rule?

6. Proposed § 312.2 would define personal information to include a ''persistent identifier.''

a. What would be the impact of the changes to the term ''persistent identifier'' in the definition of personal information?

b. Is the limitation ''used for functions other than or in addition to support for the internal operations of the Web site or online service'' sufficiently clear to provide notice of the circumstances under which a persistent identifier is covered by the Rule?

c. Are there additional identifiers that the Commission should consider adding to the list of ''persistent identifiers''?

7. Proposed § 312.2 would define personal information to include a ''an identifier that links the activities of a child across different Web sites or online services.'' Is the language sufficiently clear to provide notice of the types of identifiers covered by this paragraph?

8. Proposed § 312.2 would define personal information to include ''photograph, video, or audio file where such file contains a child's image or voice'' and no longer requires that photographs (or similar items) be combined with ''other information such that the combination permits physical or online contacting.'' What would be the impact of expanding the definition of personal information in this regard?

9. Are there identifiers that the Commission should consider adding to § 312.2's definition of ''personal information''?

a. Should paragraph (e) of the definition of personal information include other forms of government-issued identification in addition to Social Security Number?

b. Does the combination of date of birth, gender, and ZIP code provide sufficient information to permit the contacting of a specific individual such that this combination of identifiers should be included as an item of personal information?

c. Should the Commission include ''ZIP + 4'' as an item of personal information?

10. Proposed § 312.2 would define ''release of personal information'' as ''the sharing, selling, renting, or transfer of personal information to any third party.'' Is this definition sufficient to cover all potential secondary uses of children's personal information?

11. Proposed § 312.2 would define ''support for the internal operations of the Web site or online service'' as ''those activities necessary to maintain the technical functioning of the Web site or online service or to fulfill a request of a child as permitted by §§ 312.5(c)(3) and (4), and the information collected for such purposes is not used or disclosed for any other purpose.''

a. Is the term ''activities necessary to maintain the technical functioning'' sufficiently clear to provide notice of the types of activities that constitute ''support for the internal operations of the Web site or online service''? For example, is it sufficiently clear that the mere collection of an IP address, which is a necessary technical step in providing online content to web viewers, constitutes an ''activity necessary to maintain the technical functioning of the Web site or online service''?

b. Should activities other than those necessary to maintain the technical functioning or to fulfill a request of a child under §§ 312.5(c)(3) and (4) be included within the definition of ''support for the internal operations of the Web site or online service''?

Notice (§ 312.4)

12. Do the proposed changes to the ''notice on the web site or online service'' requirements in § 312.4(b) clarify or improve the quality of such notice?

13. Do the proposed changes to the ''direct notice to the parent'' requirements in § 312.4(c) clarify or improve the quality of such notices?

14. Should the Commission modify the notice requirement of the Rule to require that operators post a link to their online notice in any location where their mobile applications can be purchased or otherwise downloaded (*e.g.,* in the descriptions of their applications in Apple's App Store or in Google's Android Market)?

15. Are there other effective ways of placing notices that should be included in the proposed revised Rule?

Parental Consent (§ 312.5)

16. Do the additional methods for parental consent set forth in proposed § 312.5(b)(2) sufficiently reflect available technologies to ensure that the person providing consent is the child's parent?

17. Should the Commission require operators to maintain records indicating that parental consent was obtained, and if so, what would constitute a sufficient record? What burdens would be imposed on operators by such a requirement?

18. Is there other information the Commission should take into account before declining to adopt certain parental consent mechanisms discussed

in Part V.C.(1). of the Notice of Proposed Rulemaking?

19. The Commission proposes eliminating the ''email plus'' mechanism of parental consent from § 312.5(b)(2). What are the costs and benefits to operators, parents, and children of eliminating this mechanism?

20. Proposed § 312.5(b)(3) would provide that operators subject to Commission-approved self-regulatory program guidelines may use a parental consent mechanism determined by such safe harbor program to meet the requirements of § 312.5(b)(1). Does proposed § 312.5(b)(3) provide a meaningful incentive for the development of new parental consent mechanisms? What are the potential downsides of this approach?

Confidentiality, Security and Integrity of Personal Information Collected From Children (§ 312.8)

21. Proposed § 312.8 would add the requirement that an operator ''take reasonable measures to ensure that any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information.''

a. What are the costs and benefits to operators, parents, and children of adding this requirement?

b. Does the language proposed by the Commission provide sufficient guidance and flexibility to operators to effectuate this requirement?

Data Retention and Deletion (§ 312.10)

22. The Commission proposes adding a requirement that an operator retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

a. Does the language proposed by the Commission provide sufficient guidance and flexibility to operators to effectuate this requirement?

b. Should the Commission propose specific time frames for data retention and deletion?

c. Should the Commission more specifically delineate what constitutes ''reasonable measures to protect against unauthorized access to or use of the information''?

Safe Harbors (§ 312.11)

23. Proposed § 312.11(b)(2) would require safe harbor program applicants to conduct a comprehensive review of all member operators' information policies, practices, and representations at least annually. Is this proposed annual review requirement reasonable? Would it go far enough to strengthen program oversight of member operators?

24. Proposed § 312.11(c)(1) would require safe harbor program applicants to include a detailed explanation of their business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of member operators' fitness for membership in the safe harbor program. Is this proposed requirement reasonable? Would it provide the Commission with useful information about an applicant's ability to run a safe harbor program?

25. Proposed § 312.11(d) would require Commission-approved safe harbor programs to submit periodic reports to the Commission regarding their oversight of member Web sites.

a. Should the Commission consider requiring safe harbor programs to submit reports on a more frequent basis, *e.g.,* annually?

b. Should the Commission require that safe harbor programs report to the Commission a member's violations of program guidelines immediately upon their discovery by the safe harbor program?

Paperwork Reduction Act

26. The Commission solicits comments on whether the changes to the notice requirements (§ 312.4) and to the safe harbor requirements (§ 312.11), as well as the new data retention and deletion requirement (§ 312.10), constitute ''collections of information'' within the meaning of the Paperwork Reduction Act. The Commission requests comments that will enable it to:

a. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

c. Enhance the quality, utility, and clarity of the information to be collected; and,

d. Minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

XI. Proposed Revisions to the Rule

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and Technology, Trade practices, Web site, Youth.

For the reasons discussed above, the Commission proposes to amend Part 312 of Title 16, Code of Federal Regulations, as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

1. The authority citation for part 312 continues to read as follows:

Authority: 15 U.S.C. 6501–6508.

2. Amend § 312.2 by revising the following definitions:

§ 312.2 Definitions.

* * * * *

Collects or *collection* means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting, prompting, or encouraging a child to submit personal information online;

(b) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or,

(c) Passive tracking of a child online.

* * * * *

Disclose or disclosure means, with respect to personal information:

(a) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the Web site or online service; and,

(b) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the Internet, or through a personal home page or screen posted on a Web site or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

* * * * *

Online contact information means an e-mail address or any other substantially similar identifier that permits direct

contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

* * * * *

Personal information means individually identifiable information about an individual collected online, including:

(a) A first and last name;

(b) A home or other physical address including street name and name of a city or town;

(c) Online contact information as defined in this Section;

(d) A screen or user name where such screen or user name is used for functions other than or in addition to support for the internal operations of the Web site or online service;

(e) A telephone number;

(f) A Social Security number;

(g) A persistent identifier, including but not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier, where such persistent identifier is used for functions other than or in addition to support for the internal operations of, or protection of the security or integrity of, the Web site or online service;

(h) An identifier that links the activities of a child across different Web sites or online services;

(i) A photograph, video, or audio file where such file contains a child's image or voice;

(j) Geolocation information sufficient to identify street name and name of a city or town; or,

(k) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Release of personal information means the sharing, selling, renting, or transfer of personal information to any third party.

Support for the internal operations of the Web site or online service means those activities necessary to maintain the technical functioning of the Web site or online service, to protect the security or integrity of the Web site or online service, or to fulfill a request of a child as permitted by §§ 312.5(c)(3) and (4), and the information collected for such purposes is not used or disclosed for any other purpose.

* * * * *

Web site or online service directed to children means a commercial Web site or online service, or portion thereof, that is targeted to children. Provided, however, that a commercial Web site or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial Web site or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial Web site or online service, or a portion thereof, is targeted to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.

3. Amend § 312.4 by revising paragraphs (b) and (c) as follows:

§ 312.4 Notice.

* * * * *

(b) *Notice on the Web site or online service.* Pursuant to § 312.3(a), each operator of a Web site or online service directed to children must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its Web site or online service, *and,* at each area of the Web site or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. An operator of a general audience Web site or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be complete, the online notice of the Web site or online service's information practices must state the following:

(1) Each operator's contact information, which at a minimum, must include the operator's name, physical address, telephone number, and e-mail address;

(2) A description of what information each operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available; how such operator uses such information, and; the operator's disclosure practices for such information; and,

(3) That the parent can review and have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

(c) *Direct notice to a parent.* An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of the child's personal information, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.

(1) *Content of the direct notice to the parent required under § 312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information.*) This direct notice shall set forth:

(i) That the operator has collected the parents' online contact information from the child in order to obtain the parent's consent;

(ii) That the parent's consent is required for the child's participation in the Web site or online service, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;

(iii) The additional items of personal information the operator intends to collect from the child, if any, and the potential opportunities for the disclosure of personal information, if any, should the parent consent to the child's participation in the Web site or online service;

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(b);

(v) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and,

(vi) That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.

(2) *Content of the direct notice to the parent allowed under § 312.5(c)(2) (Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information.*) This direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child in order to provide notice to the parent of a child's participation in a Web site or online service that does

not otherwise collect, use, or disclose children's personal information; and,

(ii) That the parent's online contact information will not be used or disclosed for any other purpose;

(iii) That the parent may refuse to permit the operator to allow the child to participate in the Web site or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and,

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

(3) *Content of the direct notice to the parent required under § 312.5(c)(4) (Notice to a Parent of Operator's Intent to Communicate with the Child Multiple Times.*) This direct notice shall set forth:

(i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;

(ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;

(iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;

(iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;

(v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and,

(vi) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

(4) *Content of the direct notice to the parent required under § 312.5(c)(5) (Notice to a Parent In Order to Protect a Child's Safety.*) This direct notice shall set forth:

(i) That the operator has collected the child's name and the online contact information of the child and the parent in order to protect the safety of a child;

(ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;

(iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;

(iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and,

(v) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

4. Amend § 312.5 by revising paragraph (b)(2), by adding new paragraphs (b)(3) and (b)(4), and by revising paragraph (c), to read as follows:

§ 312.5 Parental consent.

* * * * *

(b) * * *

(2) Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or an electronic scan; requiring a parent to use a credit card in connection with a monetary transaction; having a parent call a toll-free telephone number staffed by trained personnel; having a parent connect to trained personnel via video-conference; or, verifying a parent's identity by checking a form of government-issued identification against databases of such information, *provided that* the parent's identification is deleted by the operator from its records promptly after such verification is complete.

(3) *Commission approval of parental consent mechanisms.* Interested parties may file written requests for Commission approval of parental consent mechanisms not currently enumerated in paragraph (b)(2). To be considered for approval, parties must provide a detailed description of the proposed parental consent mechanism, together with an analysis of how the mechanism meets paragraph (b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the request. The Commission shall issue a written determination within 180 days of the filing of the request.

(4) *Safe harbor approval of parental consent mechanisms.* A safe harbor program approved by the Commission under § 312.11 may approve its member operators' use of a parental consent mechanism not currently enumerated in paragraph (b)(2) where the safe harbor program determines that such parental consent mechanism meets the requirements of paragraph (b)(1).

(c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use, or disclosure of personal information from a child *except* as set forth in this paragraph:

(1) Where the sole purpose of collecting a parent's online contact information and the name of the child or the parent is to provide notice and obtain parental consent under § 312.4(c)(1) of this part. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the sole purpose of collecting a parent's online contact information is to provide notice to, and update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);

(3) Where the sole purpose of collecting a child's online contact information is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;

(4) Where the sole purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(4). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

(5) Where the sole purpose of collecting a child's name, and a child's and a parent's online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as described in § 312.4(c)(4);

(6) Where the sole purpose of collecting a child's name and online contact information is to: (i) protect the security or integrity of its Web site or online service; (ii) take precautions against liability; (iii) respond to judicial process; or (iv) to the extent permitted under other provisions of law, to provide information to law enforcement

agencies or for an investigation on a matter related to public safety; and, where such information is not be used for any other purpose.

5. Revise § 312.8 to read as follows:

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must take reasonable measures to ensure that any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information.

6. Revise § 312.10 to read as follows:

§ 312.10 Data retention and deletion requirements.

An operator of a Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

7. Revise § 312.11 to read as follows:

§ 312.11 Safe harbor programs.

(a) *In general.* Industry groups or other persons may apply to the Commission for approval of self-regulatory program guidelines (''safe harbor programs''). The application shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the application. The Commission shall issue a written determination within 180 days of the filing of the application.

(b) *Criteria for approval of self-regulatory program guidelines.* Proposed safe harbor programs must demonstrate that they meet the following performance standards:

(1) Program requirements that ensure operators subject to the self-regulatory program guidelines (''subject operators'') provide substantially the same or greater protections for children as those contained in §§ 312.2 through 312.8, and § 312.10.

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator's information policies, practices, and representations. The assessment mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program.

(3) Disciplinary actions for subject operators' non-compliance with self-regulatory program guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of any action taken against subject operators by the industry group issuing the self-regulatory guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the self-regulatory guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the self-regulatory guidelines; or,

(v) Any other equally effective action.

(c) *Request for Commission approval of self-regulatory program guidelines.* A proposed safe harbor program's request for approval shall be accompanied by the following:

(1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program.

(2) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

(3) A comparison of each provision of §§ 312.2 through 312.8, and § 312.10 with the corresponding provisions of the guidelines; and,

(4) A statement explaining: (i) how the self-regulatory program guidelines, including the applicable assessment mechanisms, meet the requirements of this part; and, (ii) how the assessment mechanisms and compliance consequences required under paragraphs (b)(2) and (b)(3) provide effective enforcement of the requirements of this part.

(d) *Reporting and recordkeeping requirements.* Approved safe harbor programs shall:

(1) Within one year after the effective date of the Final Rule amendments, and every eighteen months thereafter, submit a report to the Commission containing, at a minimum, the results of the independent assessment conducted under paragraph (b)(2), a description of any disciplinary action taken against any subject operator under paragraph (b)(3), and a description of any approvals of member operators' use of parental consent mechanism, pursuant to § 312.5(b)(4);

(2) Promptly respond to Commission requests for additional information; and,

(3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:

(i) Consumer complaints alleging violations of the guidelines by subject operators;

(ii) Records of disciplinary actions taken against subject operators; and

(iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2).

(e) *Post-approval modifications to self-regulatory program guidelines.* Approved safe harbor programs must submit proposed changes to their guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(2). The statement required under paragraph (c)(4) must describe how the proposed changes affect existing provisions of the guidelines.

(f) *Revocation of approval of self-regulatory program guidelines.* The Commission reserves the right to revoke any approval granted under this Section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, within 60 days of publication of the Final Rule amendments, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.

(g) *Operators' participation in a safe harbor program.* An operator will be deemed to be in compliance with the requirements of §§ 312.2 through 312.8, and § 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's non-compliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3).

By direction of the Commission.

Donald S. Clark,

Secretary.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 404 Species in the Southeastern United States as Endangered or Threatened With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0049; MO 92210–0–0009]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 404 Species in the Southeastern United States as Endangered or Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a partial 90-day finding on a petition to list 404 species in the southeastern United States as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that for 374 of the 404 species, the petition presents substantial scientific or commercial information indicating that listing may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the 374 species to determine if listing is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial information regarding these 374 species. Based on the status reviews, we will issue 12-month findings on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. Of the 30 other species in the petition, 1 species—Alabama shad—has had a 90-day finding published by the National Marine Fisheries Service, and 18 species are already on the Service's list of candidate species or are presently the subject of proposed rules to list. We have not yet made a finding on the remaining 11 species, but anticipate doing so no later than September 30, 2011.

DATES: To allow us adequate time to conduct a status review, we request that we receive information on or before November 28, 2011. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section below) is 11:59 p.m. Eastern Standard Time on this date. After November 28, 2011, you must submit information directly to the Regional Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R4–ES–2011–0049, which is the docket number for this action. Then click on the Search button.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R4–ES–2011–0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Janet Mizzi, Chief, Division of Endangered Species, Ecological Services, Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, GA 30345; by telephone at 404–679–7169; or by facsimile at 404–679–7081. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that a species may be warranted for listing, we are required to promptly review the status of the species (status review). For the status reviews to be complete and based on the best available scientific and commercial information, we request information on the 374 species from governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning the status of the species. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The potential effects of climate change on the species and their habitat.

If, after the status review, we determine that listing any of these species is warranted, it is our intent to propose critical habitat under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species;'' and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles, other supporting publications, or data) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning the status reviews or the 404 species by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal

identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Southeast Ecological Services Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that a petitioned action may be warranted. We are to base this finding on information found in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On April 20, 2010, we received, via electronic mail, a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, West Virginia Highlands Conservancy, Tierra Curry, and Noah Greenwald (referred to below as the CBD petition) to list 404 aquatic, riparian, and wetland species from the southeastern United States as endangered or threatened species and to designate critical habitat concurrent with listing under the Act. The petition clearly identified itself as a petition, was dated, and included the identification information required at 50 CFR 424.14(a). On April 21, 2010, via electronic mail to Noah Greenwald at CBD, we acknowledged receipt of the petition. On May 10, 2010, the Southeast Region of the Service, to which the petition had been assigned, provided additional formal written acknowledgement of receipt of the petition.

The petitioners developed an initial list of species by searching NatureServe for species that ''occur in the twelve states typically considered the Southeast, occur in aquatic, riparian, or wetland habitats and appeared to be imperiled.'' Species were considered imperiled if they were classified as G1 or G2 by NatureServe, near threatened or worse by the International Union for Conservation of Nature (IUCN), or a species of concern, threatened, or endangered by the American Fisheries Society.

NatureServe conservation status ranks range from critically imperiled (1) to demonstrably secure (5). Status is assessed and documented at three distinct geographic scales: Global (G), national (N), and subnational (S) (i.e., state/province/municipal). Subspecies are similarly assessed with a subspecific (T) numerical assignment. Assessment by NatureServe of any species as being critically imperiled (G1), imperiled (G2), or vulnerable (G3) does not constitute a recommendation by NatureServe for listing under the Act. NatureServe status assessment procedures have different criteria, evidence requirements, purposes, and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide. For example, an important factor in many legal listing processes is the extent to which a species is already receiving protection of some type—a consideration not included in the NatureServe conservation status ranks. Similarly, the IUCN and American Fisheries Society do not apply the same criteria to their ranking determinations as those encompassed in the Act and its implementing regulations.

On May 7, 2010, the Service received correspondence from the Southeastern Fishes Council, dated May 2, 2010, with an explanation of its involvement in formulation of the petition. The Council was contacted by CBD, which solicited the Council's involvement in the preparation of the subject petition. The Southeastern Fishes Council's members provided expertise in review of the CBD's list of fishes in the draft petition.

On May 27, 2010, the Freshwater Mollusk Conservation Society submitted a letter to the Regional Director, Fish and Wildlife Service, Southeast Region, in support of the CBD petition's inclusion of a large number of freshwater mollusks. On September 1, 2010, and again on October 1, 2010, CBD forwarded to the Regional Director, Service, Southeast Region, a letter of support for the subject petition from 35 conservation organizations.

The CBD submitted supplemental comments and information on October 6, 2010, in support of protecting the Panama City crayfish (*Procambarus econfinae*) under the Act. On December 13, 2010, we received a second petition, from Wild South, to list the Carolina hemlock (*Tsuga caroliniana*), as endangered and to designate its critical habitat. We acknowledged receipt of the petition in a letter dated December 20, 2010, and identified it as a second petition for the same species' as *Tsuga caroliniana* was one of the species identified in the CBD petition.

The CBD petition included 404 species for which the petitioners requested listing as endangered or threatened under the Act, and designation of critical habitat concurrent with the listing. It is our practice to evaluate all species petitioned for listing for the potential need to emergency list the species under the emergency provisions of the Act at section 4(b)(7) and as outlined at 50 CFR 424.20. We have carefully considered the information provided in the petition and in our files and have determined that emergency listing is not indicated for any of the 404 species in the petition.

The petition included 18 species that were already on the Service's list of candidate species at the time of receipt of the petition, including five that have since been proposed to be listed as endangered. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher priority listing actions. We may identify a species as a candidate for listing based on an evaluation of its status that we conducted on our own initiative, or as a result of making a finding on a petition to list a species that listing is warranted but precluded by other higher priority listing actions. Of the 404 species that are the subjects of the petition, 18 had already been placed on the candidate list as a result of our own review and evaluation. These include: sicklefin redhorse (*Moxostoma sp.* 2 (the

2 refers to one of two species within the genus that have not yet been officially classified)), laurel dace (*Phoxinus saylori*) ((currently proposed for listing as endangered (June 24, 2011; 75 FR 36035)), spectaclecase (*Cumberlandia monodonta*) ((currently proposed for listing as endangered (January 19, 2011; 76 FR 3392)), narrow pigtoe (*Fusconaia escambia*), round ebonyshell (*Fusconaia rotulata*), southern sandshell (*Hamiota australis*), sheepnose (*Plethobasus cyphyus*) ((currently proposed for listing as endangered (January 19, 2011; 76 FR 3392)), fuzzy pigtoe (*Pleurobema strodeanum*), southern kidneyshell (*Ptychobranchus jonesi*), rabbitsfoot (*Quadrula cylindrica cylindrica*), tapered pigtoe (*Fusconaia burkei*), Choctaw bean (*Villosa choctawensis*), rayed bean (*Villosa fabalis*) ((currently proposed for listing as endangered (November 2, 2010; 75 FR 67552)), black mudalia (*Elimia melanoides*), Coleman cave beetle (*Pseudanophthalmus colemanensis*), Black Warrior waterdog (*Necturus alabamensis*), and Yadkin River goldenrod (*Solidago plumosa*). We proposed to list the snuffbox (*Epioblasma triquetra*) as endangered on November 2, 2010 (75 FR 67552).

We conduct a review of all candidate species annually to ensure that a proposed listing is justified for each species, and reevaluate the relative listing priority number assigned to each species. We also evaluate the need to emergency list any of these species, particularly species with high priorities. Through this annual review we also add new candidate species and remove those that no longer warrant listing. This review and reevaluation ensure that we focus conservation efforts on those species at greatest risk first.

Because we have already made the equivalent of a 90-day and a 12-month finding on the species listed above, and they have already been identified as warranting listing, including five that we have proposed to list as endangered, we find the petition provides substantial scientific or commercial information indicating that these species may be warranted for listing.

The CBD petition includes one species, the Alabama shad (*Alosa alabamae*), that falls under the jurisdiction of the NMFS. According to the 1974 Memorandum of Understanding regarding jurisdictional responsibilities and listing procedures between the Service and NMFS, the NMFS has jurisdiction over species which either (1) Reside the majority portion of their lifetimes in marine waters, or (2) are species which spend part of their lifetimes in estuarine waters, if the majority portion of the remaining time (the time which is not spent in estuarine waters) is spent in marine waters. Based on this definition, NMFS has jurisdiction for the Alabama shad, and, accordingly, NMFS provided a letter to the Service, dated April 30, 2010, proposing to evaluate the subject petition, for the Alabama shad only, for the purpose of the 90-day finding and any required subsequent listing action. The NMFS published the 90-day finding for the Alabama shad on February 17, 2011 (76 FR 9320), and in that document announced its finding that the petition did not present substantial scientific or commercial information indicating that listing may be warranted for the Alabama shad.

Previous Federal Actions

A large number of the petitioned species have previously been considered for listing under the Act and were at one time or another assigned status as a category 1, 2, or 3C candidate species. A category 1 candidate species was one for which the Service had substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened, and for which development and publication of such a proposal was anticipated. A category 2 candidate species was one for which there was some evidence of vulnerability, but for which additional biological information was needed to support a proposed rule to list as endangered or threatened. A category 3C candidate was one that was proven to be more widespread than was previously believed and/or those that were not subject to any identifiable threats. These categories were discontinued in 1996 (December 5, 1996; 61 FR 64481) in favor of maintaining a list that only represented those species for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher priority listing actions.

The Service was previously petitioned to list two of the subject petitioned species, the Say's spiketail dragonfly (February 15, 1994) and the orangefin madtom (October 6, 1983), as endangered species. We published 90-day findings for Say's spiketail dragonfly on October 26, 1994 (59 FR 53776), and the orangefin madtom on January 16, 1984 (49 FR 1919), respectively, and 12-month findings on July 17, 1995 (60 FR 36380), and July 18, 1985 (50 FR 29238), respectively. Similarly, we previously proposed to list as endangered the Barrens topminnow (December 30, 1977; 42 FR 65209). However, that proposal was never finalized.

TABLE 1—PREVIOUS FEDERAL REGISTER NOTICES ADDRESSING THE PETITIONED SPECIES

FR Citation	Publication date	Action
74 FR 57804	11/9/2009	Endangered and Threatened Wildlife and Plants (ETWP): Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice on Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule.
61 FR 64481	12/5/1996	ETWP; Notice of Final Decision on Identification of Candidates for Listing as Endangered or Threatened.
61 FR 7596	02/28/1996	ETWP; Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species; Proposed Rule.
60 FR 36380	7/17/1995	ETWP; 12-Month Finding for a Petition To List the Say's Spiketail Dragonfly as Endangered.
59 FR 58982	11/15/1994	ETWP; Animal Candidate Review for Listing as Endangered or Threatened Species; Notice of Review.
59 FR 53776	10/26/1994	ETWP; 90-Day Finding for a Petition To List the Say's Spiketail Dragonfly as Endangered.
58 FR 51144	9/30/1993	ETWP; Review of Plant Taxa for Listing as Endangered or Threatened Species; Notice of Review.
56 FR 58664	11/21/1991	ETWP; Annual Description of Progress on Listing Actions and Findings on Recycled Petitions.
56 FR 58804	11/21/1991	ETWP; Review of Animal Taxa for Listing as Endangered or Threatened Species; Notice of Review.
55 FR 17475	4/25/1990	ETWP; Annual Description of Progress on Listing Actions and Findings on Recycled Petitions.

TABLE 1—PREVIOUS FEDERAL REGISTER NOTICES ADDRESSING THE PETITIONED SPECIES—Continued

FR Citation	Publication date	Action
55 FR 6184	2/21/1990	ETWP; Review of Plant Taxa for Listing as Endangered or Threatened Species; Notice of Review.
54 FR 554	1/6/1989	ETWP; Review of Animal Taxa for Listing as Endangered or Threatened Species; Notice of Review.
53 FR 52746	12/29/1988	ETWP; Findings on Pending Petitions and Description of Progress on Listing Actions.
53 FR 25511	7/7/1988	ETWP; Findings on Pending Petitions and Description of Progress on Listing Actions.
52 FR 24312	6/30/1987	ETWP; Findings on Pending Petitions and Description of Progress on Listing Actions.
51 FR 996	1/09/1986	ETWP; Findings on Pending Petitions and Description of Progress on Listing Actions.
50 FR 39526	9/27/1985	ETWP; Review of Plant Taxa for Listing as Endangered or Threatened Species; Notice of Review.
50 FR 37958	9/18/1985	ETWP; Review of Vertebrate Wildlife.
50 FR 29238	7/18/1985	12-Month Finding on a Petition To List the Orangefin Madtom.
50 FR 19761	5/10/1985	ETWP; Findings on Pending Petitions and Description of Progress on Listing Actions.
49 FR 21664	5/22/1984	ETWP; Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species.
49 FR 2485	1/20/1984	ETWP; Findings on Pending Petitions and Description of Progress on Listing Actions.
49 FR 1919	1/16/1984	ETWP; 90-Day Finding on a Petition To List the Orangefin Madtom.
48 FR 53640	11/28/1983	ETWP; Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species.
47 FR 58454	12/30/1982	ETWP; Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species; Notice of Review.
45 FR 82480	12/15/1980	ETWP; Review of Plant Taxa for Listing as Endangered or Threatened Species; Notice of Review.
44 FR 70796	12/10/1979	ETWP; Notice of Withdrawal of That Portion of Our June 16, 1976, Proposed Rule That Has Not Yet Been Finalized.
44 FR 44418	7/27/1979	ETWP; Reproposal of Critical Habitat for the Barrens Topminnow.
44 FR 12382	3/6/1979	ETWP; Withdrawal of Proposed Critical Habitat for the Barrens Topminnow.
43 FR 21702	5/19/1978	ETWP; Proposed Endangered Status and Critical Habitat for Two Species of Turtles (Key Mud Turtle and Plymouth Red-bellied Turtle).
43 FR 17909	4/26/1978	ETWP; Final Rule and Summary of General Comments Received in Response to a Proposal To List Some 1700 U.S. Vascular Plants.
42 FR 65209	12/30/1977	ETWP; Proposed Endangered Status for the Barrens Topminnow.
41 FR 24524	6/16/1976	ETWP; Proposed Endangered Status for Some 1700 U.S. Vascular Plants.
40 FR 27824	7/1/1975	Acceptance of Smithsonian Report As a Petition To List Taxa Named Therein Under Section 4(b)(2) of the Act and Intention To Review the Status of Those Plants.

Species Information

The petition identified 404 aquatic, riparian, and wetland species from the southeastern United States as needing protection under the Act. This list included 15 amphibians, 6 amphipods, 18 beetles, 3 birds, 4 butterflies, 9 caddisflies, 83 crayfish, 14 dragonflies, 48 fish, 1 springfly, 1 fairy shrimp, 2 isopods, 4 mammals, 1 moth, 48 mussels, 6 non-vascular plants, 13 reptiles, 44 snails, 8 stoneflies, and 76 vascular plants. Of these 404 species, 374 species are addressed in this finding (listed in Table 2 in the *Summary of Threats as Identified in the Petition* section below). We have not yet made a finding on the following 11 species: South Florida rainbow snake (*Farancia erytrogramma seminola*), Sarah's hydroptila caddisfly (*Hydroptila sarahae*), Rogue Creek hydroptila caddisfly (*Hydroptila okaloosa*), Florida brown checkered summer sedge (*Polycentropus floridensis*), Florida fairy shrimp (*Dexteria floridana*), Ouachita creekshell (*Villosa arkansasensis*), crystal darter (*Crystallaria asprella*), spotted darter (*Etheostoma maculatum*), Florida bog frog (*Rana okaloosae*), Greensboro burrowing crayfish (*Cambarus catagius*), and Blood River crayfish (*Orconectes burri*).

The nature of this petition finding, that is, the large number of species evaluated, necessitates our limiting a discussion of species information to a general one; only where there is a clarification necessary do we provide specific species information below.

The petition identified 15 amphibians and requested that they be added to the List of Endangered and Threatened Wildlife (List). Thirteen of these are subjects of this finding, including the following: Streamside salamander (*Ambystoma barbouri*), one-toed amphiuma (*Amphiuma pholeter*), hellbender (*Cryptobranchus alleganiensis*), Cumberland dusky salamander (*Desmognathus abditus*), seepage salamander (*Desmognathus aeneus*), Chamberlain's dwarf salamander (*Eurycea chamberlaini*), Oklahoma salamander (*Eurycea tynerensis*), Tennessee cave salamander (*Gyrinophilus palleucus*), West Virginia spring salamander (*Gyrinophilus subterraneus*), Georgia blind salamander (*Eurycea wallacei,* formerly known as, and identified by petitioners as, *Haideotriton wallacei*), Neuse River waterdog (*Necturus lewisi*), Gulf hammock dwarf siren (*Pseudobranchus striatus lustricolus*), and patch-nosed salamander (*Urspelerpes brucei*). The Black Warrior waterdog (*Necturus alabamensis*) is already on the Service's candidate species list. The seepage salamander, Oklahoma salamander, Tennessee cave salamander, West Virginia Spring salamander, Georgia blind salamander, Neuse River waterdog, hellbender, and Gulf hammock dwarf siren were previous C2 candidates for Federal listing, until that category was discontinued in 1996.

Chamberlain's dwarf salamander is given a NatureServe global ranking of G5; however, its status in Georgia is S1, indicating it is considered critically imperiled in that State. The streamside salamander is given the G4 conservation status by NatureServe; however, it is considered critically imperiled (S1) in West Virginia, imperiled (S2) in Tennessee, and vulnerable (S3) in Indiana. The one-toed amphiuma maintains a global G3 ranking by NatureServe; however, it is also considered critically imperiled by NatureServe in Mississippi, Alabama,

and Georgia, and vulnerable in Florida. The Tennessee cave salamander maintains a NatureServe global ranking of G2 with State rankings of S2 (AL and TN) and S1 (GA). The hellbender maintains a NatureServe global ranking of G3. Its State status ranges from S1 to S3. The subspecies *bishopi,* or Ozark hellbender, was proposed for Federal listing as endangered on September 8, 2010 (75 FR 54561). The Cumberland dusky salamander and Georgia blind salamander each have a NatureServe conservation status of imperiled (G2), with State rankings varying from possibly extirpated, to critically imperiled, to imperiled. The seepage salamander, Oklahoma salamander, and Neuse River waterdog each have a NatureServe global conservation ranking of G3, with individual State rankings of S1 to S3. The West Virginia spring salamander and patch-nosed salamander each have a NatureServe conservation ranking of G1. The Gulf hammock dwarf siren is given a NatureServe global ranking of T1. The dwarf siren has not been documented since its description in 1951.

The petition identified six amphipods and requested that they be added to the List, including the following: Florida cave amphipod (*Crangonyx grandimanus*), Hobbs cave amphipod (*Crangonyx hobbsi*), Cooper's cave amphipod (Stygobromus cooperi), tidewater amphipod (*Stygobromus indentatus*), Morrison's cave amphipod (*Stygobromus morrisoni*), and minute cave amphipod (*Stygobromus parvus*).

These six amphipods are each assigned a NatureServe Global ranking of either G2 or G3, indicating they are considered imperiled or vulnerable across their entire range. Cooper's cave amphipod, tidewater amphipod, Morrison's cave amphipod and the minute cave amphipod were each previous Service category 2 candidate species for listing (species for which there was some evidence of vulnerability, but for which additional biological information was needed to support a proposed rule to list as endangered or threatened).

The petition identified 18 beetles and requested that they be added to the List. Seventeen of these are included in this finding, including the following: Cobblestone tiger beetle (*Cincindela marginipennis*), Avernus cave beetle (*Pseudanophthalmus avernus*), Little Kennedy cave beetle (*Pseudanophthalmus cordicollis*), New River Valley cave beetle (*Pseudanophthalmus egberti*), Cumberland Gap cave beetle (*Pseudanophthalmus hirsutus*), Hubbard's cave beetle (*Pseudanophthalmus hubbardi*), Hubricht's cave beetle (*Pseudanophthalmus hubrichti*), Crossroad's cave beetle (*Pseudanophthalmus intersectus*), Madden's cave beetle (*Pseudanophthalmus limicola*), Dry Fork Valley cave beetle (*Pseudanophthalmus montanus*), Natural Bridge cave beetle (*Pseudanophthalmus pontis*), South Branch Valley cave beetle (*Pseudanophthalmus potomaca*), overlooked cave beetle (*Pseudanophthalmus praetermissus*), Saint Paul cave beetle (*Pseudanophthalmus sanctipauli*), silken cave beetle (*Pseudanophthalmus sericus*), Thomas's cave beetle (*Pseudanophthalmus thomasi*), and Maiden Spring cave beetle (*Pseudanophthalmus virginicus*). The Coleman's cave beetle (*Pseudanophthalmus colemanensis*) is already a Federal candidate species.

These cave beetles are locally endemic to small cave systems in Virginia, West Virginia, and Tennessee. Sixteen of them are afforded a NatureServe ranking of G1, with a population size of 1,000 or fewer, and many have not been documented since their description. One cave beetle, the South Branch Valley cave beetle, has a slightly wider range and is afforded a NatureServe ranking of G3. All of these beetles were previous category 2 candidates for Federal listing, until that category was discontinued in 1996.

The petition identified three birds and requested that they be added to the List, including the following: MacGillivray's seaside sparrow (*Ammodrammus maritimus macgillivraii*), Florida sandhill crane (*Grus canadensis pratensis*), and black rail (*Laterallus jamaicensis*). MacGillivray's seaside sparrow and the Florida sandhill crane are given a NatureServe ranking of T2, while the black rail is more widely distributed and given a NatureServe ranking of G4. The black rail is a previous category 2 candidate species.

The petition identified four butterflies and requested that they be added to the List, including the following: Linda's roadside-skipper (*Amblyscirtes linda*), Duke's skipper (*Euphyes dukesi calhouni*), Palatka skipper (*Euphyes pilatka klotsi*), and rare skipper (*Problema bulenta*). Linda's roadside skipper and the rare skipper are afforded a NatureServe ranking of G2. Duke's and Palatka's skippers are afforded NatureServe rankings of T2 and T1, respectively. The rare skipper was previously considered a category 2 candidate, until that category was discontinued by the Service in 1996.

The petition identified nine caddisflies and requested that they be added to the List. Six of these are included in this finding, including the following: Logan's agarodes caddisfly (*Agarodes logani*), Sykora's hydroptila caddisfly (*Hydroptila sykorae*), Morse's little plain brown sedge (*Lepidostoma morsei*), little oecetis longhorn caddisfly (*Oecetis parva*), Setose cream and brown mottled microcaddisfly (*Oxyethira setosa*), and three-toothed triaenodes caddisfly (*Triaenodes tridontus*).

Of these caddisflies, two are assigned a NatureServe ranking of G1, and four are assigned a G2. There is very little known about these species except that they appear to be very narrow endemics. The little oecetis longhorn caddisfly and three-toothed triaenodes caddisfly are previous category 2 candidate species.

The petition identified 83 crayfish and requested that they be added to the List. Eighty-one of these are included in this finding: Bayou Bodcau crayfish (*Bouchardina robisoni*), Dougherty Plain cave crayfish (*Cambarus cryptodytes*), Obey crayfish (*Cambarus obeyensis*), cypress crayfish (*Cambarellus blacki*), least crayfish (*Cambarellus diminutus*), angular dwarf crawfish (*Cambarellus lesliei*), Big South Fork crayfish (*Cambarus bouchardi*), New River crayfish (*Cambarus chasmodactylus*), Chauga crayfish (*Cambarus chaugaensis*), Coosawattae crayfish (*Cambarus coosawattae*), slenderclaw crayfish (*Cambarus cracens*), Conasauga blue burrower (*Cambarus cymatilis*), Grandfather Mountain crayfish (*Cambarus eeseeohensis*), Elk River crayfish (*Cambarus elkensis*), Chickamauga crayfish (*Cambarus extraneus*), Etowah crayfish (*Cambarus fasciatus*), Little Tennessee crayfish (*Cambarus georgiae*), Piedmont blue burrower (*Cambarus harti*), spiny scale crayfish (*Cambarus jezerinaci*), Alabama cave crayfish (*Cambarus jonesi*), Greenbrier cave crayfish (*Cambarus nerterius*), Hiwassee headwater crayfish (*Cambarus parrishi*), pristine crayfish (*Cambarus pristinus*), Chattooga River crayfish (*Cambarus scotti*), beautiful crayfish (*Cambarus speciosus*), Broad River spiny crayfish (*Cambarus spicatus*), lean crayfish (*Cambarus strigosus*), blackbarred crayfish (*Cambarus unestami*), Big Sandy crayfish (*Cambarus veteranus*), Brawley's Fork crayfish (*Cambarus williami*), mimic crayfish (*Distocambarus carlsoni*), Broad River burrowing crayfish (*Distocambarus devexus*), Newberry burrowing crayfish (*Distocambarus youngineri*), burrowing bog crayfish (*Fallicambarus burrisi*), speckled burrowing crayfish

(*Fallicambarus danielae*), Jefferson County crayfish (*Fallicambarus gilpini*), Ouachita burrowing crayfish (*Fallicambarus harpi*), Hatchie burrowing crayfish (*Fallicambarus hortoni*), slenderwrist burrowing crayfish (*Fallicambarus petilicarpus*), Saline burrowing crayfish (*Fallicambarus strawni*), Crested riverlet crayfish (*Hobbseus cristatus*), Oktibbeha riverlet crayfish (*Hobbseus orconectoides*), Tombigbee riverlet crayfish (*Hobbseus petilus*), Yalobusha riverlet crayfish (*Hobbseus yalobushensis*), Calcasieu crayfish (*Orconectes blacki*), Coldwater crayfish (*Orconectes eupunctus*), Yazoo crayfish (*Orconectes hartfieldi*), Tennessee cave crayfish (*Orconectes incomptus*), Sucarnoochee River crayfish (*Orconectes jonesi*), Kisatchie painted crayfish (*Orconectes maletae*), Mammoth Spring crayfish (*Orconectes marchandi*), Appalachian cave crayfish (*Orconectes packardi*), Shelta cave crayfish (*Orconectes sheltae*), Chowanoke crayfish (*Orconectes virginiensis*), Hardin crayfish (*Orconectes wrighti*), Orlando cave crayfish (*Procambarus acherontis*), Coastal flatwoods crayfish (*Procambarus apalachicolae*), Silver Glen Springs crayfish (*Procambarus attiguus*), Jackson Prairie crayfish (*Procambarus barbiger*), Mississippi flatwoods crayfish (*Procambarus cometes*), bigcheek cave crayfish (*Procambarus delicatus*), Panama City crayfish (*Procambarus econfinae*), Santa Fe cave crayfish (*Procambarus erythrops*), spinytail crayfish (*Procambarus fitzpatricki*), Orange Lake cave crayfish (*Procambarus franzi*), Big Blue Springs cave crayfish (*Procambarus horsti*), lagniappe crayfish (*Procambarus lagniappe*), coastal lowland cave crayfish (*Procambarus leitheuseri*), Florida cave crayfish (*Procambarus lucifugus*), Alachua light-fleeing cave crayfish (*Procambarus lucifugus alachua*), Florida cave crayfish (*Procambarus lucifugus lucifugus*), Shutispear crayfish (*Procambarus lylei*), Miami cave crayfish (*Procambarus milleri*), Putnam County cave crayfish (*Procambarus morrisi*), Woodville Karst cave crayfish (*Procambarus orcinus*), pallid cave crayfish (*Procambarus pallidus*), Black Creek crayfish (*Procambarus pictus*), bearded red crayfish (*Procambarus pogum*), regal burrowing crayfish (*Procambarus regalis*), Irons Fork burrowing crayfish (*Procambarus reimeri*), and spider cave crayfish (*Troglocambarus maclanei*).

The petition identified the Florida cave crayfish twice in its list of 404 species, once at the species level, *Procambarus lucifugus,* and once at the subspecific level, *Procambarus lucifugus lucifugus.* We include both in this finding with the intent that a further status review will assess the status at both the species and subspecies levels.

We received an amended petition from CBD providing supplemental comments in support of listing the Panama City crayfish. The petition identified threats from habitat loss and degradation, predation, overharvest from collections for use as fishing bait, drought, its limited range and isolated distribution, pollution from pesticides and fertilizers, invasive species of introduced crayfish, and the inadequacy of existing regulatory mechanisms. The Panama City crayfish only occurs in Bay County, Florida, where it is considered a species of special concern by the State of Florida. The Service has worked with the State and the St. Joe Company to develop a Candidate Conservation Agreement with Assurances, but the Agreement has not been finalized.

Almost all of the petitioned crayfish are restricted to narrow ranges encompassing small cave or stream systems, which places them in the G1 or G2 NatureServe ranking due to their restricted ranges. Two exceptions to this are the Woodville Karst cave crayfish (*Procambarus orcinus*), which receives a G3 ranking, and the regal burrowing crayfish (*Procambarus regalis*), which is given a G2G3 ranking. Their narrow ranges make these crayfish vulnerable to any event that would result in habitat degradation. A number of the crayfish (26) were previously considered category 2 candidates until that category was discontinued by the Service in 1996.

The petition identified 14 dragonflies and requested that they be added to the List, including the following: Say's spiketail (*Cordulegaster sayi*), Cherokee clubtail (*Gomphus consanguis*), Tennessee clubtail (*Gomphus sandrius*), Septima's clubtail (*Gomphus septima*), Westfall's clubtail (*Gomphus westfalli*), purple skimmer (*Libellula jesseana*), Mountain River cruiser (*Macromia margarita*), southern snaketail (*Ophiogomphus australis*), Edmund's snaketail (*Ophiogomphus edmundo*), Appalachian snaketail (*Ophiogomphus incurvatus*), Calvert's emerald (*Somatochlora calverti*), Texas emerald (*Somatochlora margarita*), Ozark emerald (*Somatochlora ozarkensis*), and yellow-sided clubtail (*Stylurus potulentus*).

The Service was previously (February 15, 1994) petitioned to list the Say's spiketail dragonfly as an endangered species. We published a 90-day finding on October 26, 1994 (59 FR 53776) indicating that because the species was already a category 2 candidate for listing we would proceed with a full status review. The 12-month finding was published on July 17, 1995 (60 FR 36380). The Service found that listing the species was not warranted but retained the designation of the Say's spiketail as a category 2 candidate species. An additional eight of the petitioned dragonflies held previous designations of category 2 candidate species, including the Cherokee clubtail, Tennessee clubtail, Septima's clubtail, Westfall's clubtail, Mountain River cruiser, Edmund's snaketail, Appalachian snaketail, and the Texas emerald. The NatureServe global ranking of the petitioned dragonflies ranges from G1, critically imperiled, to G3, vulnerable.

The petition identified 47 fish (not including the Alabama shad (*Alosa alabamae*), which has already been the subject of a 90-day finding by NMFS) to be added to the List. Forty-three of these are included in this finding, including the following: Northern cavefish (*Amblyopsis spelaea*), bluestripe shiner (*Cyprinella callitaenia*), Altamaha shiner (*Cyprinella xaenura*), Carolina pygmy sunfish (*Elassoma boehlkei*), Ozark chub (*Erimystax harryi*), Warrior darter (*Etheostoma bellator*), holiday darter (*Etheostoma brevirostrum*), ashy darter (*Etheostoma cinereum*), Barrens darter (*Etheostoma forbesi*), smallscale darter (*Etheostoma microlepidum*), candy darter (*Etheostoma osburni*), paleback darter (*Etheostoma pallididorsum*), egg-mimic darter (*Etheostoma pseudovulatum*), striated darter (*Etheostoma striatulum*), Shawnee darter (*Etheostoma tecumsehi*), Tippecanoe darter (*Etheostoma tippecanoe*), trispot darter (*Etheostoma trisella*), Tuscumbia darter (*Etheostoma tuscumbia*), Barrens topminnow (*Fundulus julisia*), robust redhorse (*Moxostoma robustum*), popeye shiner (*Notropis ariommus*), Ozark shiner (*Notropis ozarcanus*), peppered shiner (*Notropis perpallidus*), rocky shiner (*Notropis suttkusi*), saddled madtom (*Noturus fasciatus*), Carolina madtom (*Noturus furiosus*), orangefin madtom (*Noturus gilberti*), piebald madtom (*Noturus gladiator*), Ouachita madtom (*Noturus lachneri*), frecklebelly madtom (*Noturus munitus*), Caddo madtom (*Noturus taylori*), Chesapeake logperch (*Percina bimaculata*), coal darter (*Percina brevicauda*), Halloween darter (*Percina crypta*), bluestripe darter (*Percina cymatotaenia*), bridled darter (*Percina*

kusha), longhead darter (*Percina macrocephala*), longnose darter (*Percina nasuta*), bankhead darter (*Percina sipsi*), sickle darter (*Percina williamsi*), broadstripe shiner (*Pteronotropis euryzonus*), bluehead shiner (*Pteronotropis hubbsi*), and blackfin sucker (*Thoburnia atripinnis*). The NatureServe global ranking of these fish ranges from G1 to G4.

Since receipt of the CBD petition, the laurel dace was proposed for listing as endangered (75 FR 36035; June 24, 2010). The sicklefin redhorse has already been found to be warranted for listing and is a current Federal candidate species.

On December 30, 1977, the Barrens topminnow was proposed for listing as endangered with critical habitat (42 FR 65209). On March 6, 1979, the critical habitat portion of the proposal was withdrawn due to the procedural and substantive changes made to the Act in 1978 (44 FR 12382). On July 27, 1979, the Service published a reproposal of critical habitat for the Barrens topminnow (44 FR 44418). A final listing was never published, and the species was subsequently classified as a category 2 candidate for Federal listing until that category was discontinued in 1996.

On October 6, 1983, the Service was petitioned to list the orangefin madtom and a substantial finding was published on January 16, 1984 (49 FR 1919). On completion of the status review on October 12, 1984, a 12-month finding was made that listing the orangefin madtom was warranted but precluded by other efforts to revise the Lists. This finding was announced in a July 18, 1985, **Federal Register** notice (50 FR 29238). The species remained a candidate species until its removal from the candidate list in 1996.

In addition to the above species, 24 of the petitioned fish were at one time candidates for listing under the Act. The peppered shiner, paleback darter, and Ouachita madtom were category 1 candidates (47 FR 58454). However, they were subsequently removed from the candidate list. Twenty-one of the petitioned fish were category 2 candidates for listing, including the following: Northern cavefish, bluestripe shiner, Carolina pygmy sunfish, Warrior darter, holiday darter, ashy darter, Barrens darter, candy darter, egg-mimic darter, striated darter, trispot darter, Tuscumbia darter, robust redhorse, Ozark shiner, Carolina madtom, frecklebelly madtom, Caddo madtom, bluestripe darter, longhead darter, longnose darter, and Halloween darter.

In 1995, the Service entered into a cooperative voluntary partnership, the Robust Redhorse Conservation Committee, to conserve the robust redhorse through a Memorandum of Understanding between State and Federal resource agencies, private industry, and the conservation community. In 2002, the Service entered into a Robust Redhorse Candidate Conservation Agreement with Assurances with the Georgia Department of Natural Resources and the Georgia Power Company to restore the species to the Ocmulgee River.

The petition identified one springfly, the Blueridge springfly (*Remenus kirchneri*), and one moth, the Louisiana eyed silkmoth (*Automeris louisiana*), and requested that they be added to the List. These species hold NatureServe global rankings of G2.

The petition identified four mammals and requested that they be added to the List, including the following: Sherman's short-tailed shrew (*Blarina carolinensis shermani*), Pine Island oryzomys or marsh rice rat (*Oryzomys palustris,* pop. 1), Sanibel Island oryzomys or marsh rice rat (*Oryzomys palustris,* pop. 2), and insular cotton rat (*Sigmodon hispidus insulicola*). All four of these mammals are afforded a ranking of G1 or T1 by NatureServe. The insular cotton rat was previously a category 2 candidate species but was removed from the candidate list in 1996 when the category was discontinued.

The petition identified two isopods and requested that they be added to the List: The *Caecidotea cannula* (no common name) and Rye Cove isopod (*Lirceus culveri*). These isopods are given NatureServe rankings of G2 (*Caecidotea cannula*) and G1 (Rye Cove isopod). Both species were former category 2 candidates for listing, until that category was discontinued in 1996.

The petition identified 48 mussels and requested that they be added to the List. Thirteen species of mussels identified in the petition are not evaluated in this finding; twelve have previously been found by the Service to warrant listing, and one, the Ouachita creekshell (Villosa arkansasensis) has not yet been evaluated. Thirty-five of the petitioned species are included in this finding, including the following: Altamaha arcmussel (*Alasmidonta arcula*), southern elktoe (*Alasmidonta triangulata*), brook floater (*Alasmidonta varicosa*), Apalachicola floater (*Anodonta heardi*), rayed creekshell (*Anodontoides radiatus*), western fanshell (*Cyprogenia aberti*), southern lance (*Elliptio ahenea*), Alabama spike (*Elliptio arca*), delicate spike (*Elliptio arctata*), brother spike (*Elliptio fraterna*), yellow lance (*Elliptio lanceolata*), St. Johns elephant ear (*Elliptio monroensis*), inflated spike (*Elliptio purpurella*), Tennessee pigtoe (Pleuronaia *barnesiana*), Atlantic pigtoe (*Fusconaia masoni*), longsolid (*Fusconaia subrotunda*), Waccamaw fatmucket (*Lampsilis fullerkati*), Tennessee heelsplitter (*Lasmigona holstonia*), green floater (*Lasmigona subviridis*), Cumberland moccasinshell (*Medionidus conradicus*), Suwannee moccasinshell (*Medionidus walkeri*), round hickorynut (*Obovaria subrotunda*), Alabama hickorynut (*Obovaria unicolor*), Canoe Creek pigtoe (*Pleurobema athearni*), Tennessee clubshell (*Pleurobema oviforme*), Warrior pigtoe (*Pleurobema rubellum*), pyramid pigtoe (*Pleurobema rubrum*), inflated floater (*Pyganodon gibbosa*), Tallapoosa orb (*Quadrula asperata archeri*), salamander mussel (*Simpsonaias ambigua*), purple lilliput (*Toxolasma lividus*), Savannah lilliput (*Toxolasma pullus*), Alabama rainbow (*Villosa nebulosa*), Kentucky creekshell (*Villosa ortmanni*), and Coosa creekshell (*Villosa umbrans*).

These mussels have NatureServe rankings ranging from G1, critically imperiled, to G3, vulnerable, with one mussel, the round hickorynut, having a ranking of G4, apparently stable. The Atlantic pigtoe, Waccamaw fatmucket, Tennessee heelsplitter, green floater, Suwannee moccasinshell, Tennessee clubshell, warrior pigtoe, salamander mussel, purple lilliput, Savannah lilliput, and Kentucky creekshell, are previous category 2 candidates for listing, but were removed when the category was discontinued in 1996.

The snuffbox (*Epioblasma triquetra*) and rayed bean (*Villosa fabalis*) were proposed for listing as endangered on November 2, 2010 (75 FR 67552). The spectaclecase (*Cumberlandia monodonta*) and sheepnose (*Plethobasus cyphyus*) were proposed as endangered on January 19, 2011 (76 FR 3392). The other eight are current candidates for Federal listing and subjects of a draft proposed rule to list, including the narrow pigtoe (*Fusconaia escambia*), round ebonyshell (*Fusconaia rotulata*), southern sandshell (*Hamiota australis*), fuzzy pigtoe (*Pleurobema strodeanum*), southern kidneyshell (*Ptychobranchus jonesi*), rabbitsfoot (*Quadrula cylindrica cylindrica*), tapered pigtoe (*Fusconaia burkei*), and Choctaw bean (*Villosa choctawensis*).

The petition identified six non-vascular plants and requested that they be added to the List of Endangered and Threatened Plants, including the following: *Fissidens appalachensis* (Appalachian fissidens moss), *Fissidens hallii* (Hall's pocket moss), *Megaceros aenigmaticus* (hornwort), *Phaeophyscia*

leana (Lea's bog lichen), *Plagiochila caduciloba* (Gorge leafy liverwort), and *Plagiochila sharpii* ssp. *sharpii* (Sharp's leafy liverwort). The NatureServe Global ranking for these plants ranges from G2, imperiled (*Fissidens appalachensis, Fissidens hallii, Phaeophyscia leana,* and *Megaceros aenigmaticus*), to G3, vulnerable (*Plagiochila caduciloba*), to T3, vulnerable (*Plagiochila sharpii* ssp. *sharpii*). *Plagiochila caduciloba* and *Plagiochila sharpii* ssp. *sharpii* held prior Federal category 2 candidate status, but were removed from that list when we discontinued use of the category 2 and 3C lists in 1996.

The petition identified 13 reptiles and requested that they be added to the List. Twelve of these are subjects of this finding, including the following: Kirtland's snake (*Clonophis kirtlandii*), western chicken turtle (*Deirochelys reticularia miaria*), Florida keys mole skink (*Eumeces egregius egregius*), Barbour's map turtle (*Graptemys barbouri*), Escambia map turtle (*Graptemys ernsti*), Pascagoula map turtle (*Graptemys gibbonsi*), black-knobbed map turtle (*Graptemys nigrinoda*), Alabama map turtle (*Graptemys pulchra*), Lower Florida Keys striped mud turtle (*Kinosternon baurii,* pop. 1), Florida Panhandle Florida red-bellied turtle (*Pseudemys nelsoni,* pop. 1), northern red-bellied cooter (*Pseudemys rubriventris*), and Lower Florida Keys eastern ribbonsnake (*Thamnophis sauritus,* pop. 1).

The Kirtland's snake, Barbour's map turtle, Escambia map turtle, and Pascagoula map turtle have a NatureServe conservation status of G2, with State rankings varying from possibly extirpated, to S1, to S2. The black-knobbed map turtle has a NatureServe ranking of G3. The Alabama map turtle has a NatureServe ranking of G4, but State rankings vary from S1 to S3. The Florida Keys mole skink and Lower Florida Keys eastern ribbonsnake are given a NatureServe global ranking of T1. The western chicken turtle is considered secure by NatureServe with a global ranking of T5. The Lower Florida Keys striped mud turtle and the Florida Panhandle population of the Florida red-bellied turtle are given a T2 NatureServe ranking. We proposed to list the striped mud turtle as endangered on May 19, 1978 (43 FR 21702) but never finalized the listing. The species was placed on the category 2 candidate list on December 30, 1982 (47 FR 58454). The northern red-bellied cooter is given a NatureServe ranking of G4 or apparently stable with State rankings ranging from S2 (imperiled) to S5 (stable). In addition to the striped mud turtle, Kirtland's snake, Florida Keys mole skink, and Barbour's map turtle were each prior Federal category 2 candidate species. The black-knobbed map turtle was a prior category 3C candidate species (taxa that were proven to be more widespread than was previously believed and/or those that were not subject to any identifiable threat).

The petition identified 44 snails and requested that they be added to the List, of which 43 are subjects of this finding, including the following: Manitou cavesnail (*Antrorbis breweri*), Blue Spring hydrobe snail (*Aphaostracon asthenes*), freemouth hydrobe snail (*Aphaostracon chalarogyrus*), Wekiwa hydrobe snail (*Aphaostracon monas*), dense hydrobe snail (*Aphaostracon pycnus*), Clifton Spring hydrobe snail (*Aphaostracon theiocrenetum*), acute elimia (*Elimia acuta*), mud elimia (*Elimia alabamensis*), ample elimia (*Elimia ampla*), Lilyshoals elimia (*Elimia annettae*), spider elimia (*Elimia arachnoidea*), princess elimia (*Elimia bellacrenata*), walnut elimia (*Elimia bellula*), prune elimia (*Elimia chiltonensis*), cockle elimia (*Elimia cochliaris*), cylinder elimia (*Elimia cylindracea*), nodulose Coosa River snail (*Elimia lachryma*), round-rib elimia (*Elimia nassula*), caper elimia (*Elimia olivula*), engraved elimia (*Elimia perstriata*), compact elimia (*Elimia showalteri*), elegant elimia (*Elimia teres*), cobble elimia (*Elimia vanuxemiana*), Ichetucknee siltsnail (*Floridobia mica*), Enterprise siltsnail (*Floridobia monroensis*), pygmy siltsnail (*Floridobia parva*), Ponderosa siltsnail (*Floridobia ponderosa*), Wekiwa siltsnail (*Floridobia wekiwae*), spiny riversnail (*Io fluvialis*), Arkansas mudalia (*Leptoxis arkansasensis*), spotted rocksnail (*Leptoxis picta*), smooth mudalia (*Leptoxis virgata*), knobby rocksnail (*Lithasia curta*), helmet rocksnail (*Lithasia duttoniana*), Ocmulgee marstonia (*Marstonia agarhecta*), beaverpond marstonia (*Marstonia castor*), Ozark pyrg (*Marstonia ozarkensis*), magnificant rams-horn (*Planorbella magnifica*), corpulent hornsnail (*Pleurocera corpulenta*), shortspire hornsnail (*Pleurocera curta*), skirted hornsnail (*Pleurocera pyrenella*), domed ancylid (*Rhodacme elatior*), and reverse pebblesnail (*Somatogyrus alcoviensis*).

These 43 snails each maintain a NatureServe ranking of either G1, critically imperiled, or G2, imperiled. Several are previous Federal category 2 candidates, including the magnificent rams-horn, beaverpond marstonia, Ocmulgee marstonia, and the skirted hornsnail, until that category was discontinued in 1996.

The petition identified eight stoneflies and requested that they be added to the List, including the following: Virginia stone (*Acroneuria kosztarabi*), Sevier snowfly (*Allocapnia brooksi*), Smokies snowfly (*Allocapnia fumosa*), Karst snowfly (*Allocapnia cunninghami*), Tennessee forestfly (*Amphinemura mockfordi*), Louisiana needlefly (*Leuctra szczytkoi*), Smokies needlefly (*Megaleuctra williamsae*), and lobed roachfly (*Tallaperla lobata*). The Virginia stone and Karst snowfly are assigned a NatureServe global ranking of G1, critically imperiled. The Sevier snowfly, Smokies snowfly, Tennessee forestfly, Louisiana needlefly, Smokies needlefly, and lobed roachfly are assigned NatureServe global rankings of G2.

Lastly, the petition identified 76 vascular plants and requested that they be added to the List of Endangered and Threatened Plants, of which 75 are included in this finding, including the following: *Aeschynomene pratensis* (meadow joint-vetch), *Alnus maritima* (seaside alder), *Amorpha georgiana* var. *georgiana* (Georgia leadplant or Georgia indigo bush), *Arnoglossum diversifolium* (variable-leaved Indian-plantain), *Balduina atropurpurea* (purple balduina or purple disk honeycombhead), *Baptisia megacarpa* (Apalachicola wild indigo), *Bartonia texana* (Texas screwstem), *Boltonia montana* (Doll's daisy), *Calamovilfa arcuata* (rivergrass), *Carex brysonii* (Bryson's sedge), *Carex impressinervia* (impressed-nerved sedge), *Coreopsis integrifolia* (ciliate-leaf tickseed), *Croton elliottii* (Elliott's croton), *Elytraria caroliniensis* var. *angustifolia* (narrowleaf Carolina scalystem), *Encyclia cochleata* var. *triandra* (Clam-shell orchid), *Epidendrum strobiliferum* (Big Cypress epidendrum), *Eriocaulon koernickianum* (small-headed pipewort), *Eriocaulon nigrobracteatum* (black-bracked pipewort), *Eupatorium paludicola* (a thoroughwort), *Eurybia saxicastellii* (Rockcastle wood-aster), *Fimbristylis perpusilla* (Harper's fimbristylis), *Forestiera godfreyi* (Godfry's privet), *Hartwrightia floridan* (Hartwrightia), *Helianthus occidentalis* ssp. *plantagineus* (Shinner's sunflower), *Hexastylis speciosa* (Harper's heartleaf), *Hymenocallis henryae* (Henry's spider-lily), *Hypericum edisonianum* (Edison's ascyrum), *Hypericum lissophloeus* (smooth-barked St. John's-wort), *Illicium parviflorum* (yellow anisetree), *Isoetes hyemalis* (winter or evergreen quillwort), *Isoetes microvela* (thin-wall quillwort), *Lilium iridollae* (panhandle lily), *Lindera subcoriacea* (bog spicebush), *Linum westii* (West's flax),

Lobelia boykinii (Boykin's lobelia), *Ludwigia brevipes* (Long Beach seedbox), *Ludwigia spathulata* (spathulate seedbox), *Ludwigia ravenii* (Raven's seedbox), *Lythrum curtissii* (Curtis's loosestrife), *Lythrum flagellare* (lowland loosestrife), *Macbridea caroliniana* (Carolina birds-in-a-nest), *Marshallia grandiflora* (Large-flowered Barbara's-buttons), *Minuartia godfreyi* (Godfrey's stitchwort), *Najas filifolia* (narrowleaf naiad), *Nufar lutea* ssp. *sagittifolia* (Cape Fear spatterdock or yellow pond lily), *Nufar lutea* ssp. *ulvacea* (West Florida cow-lily), *Nyssa ursina* (Bear tupelo or dwarf blackgum), *Oncidium undulatum* (Cape Sable orchid), *Physostegia correllii* (Correll's false dragonhead), *Potamogeton floridanus* (Florida pondweed), *Potamogeton tennesseensis* (Tennessee pondweed), *Ptilimnium ahlesii* (Carolina bishopweed), *Rhexia parviflora* (small-flower meadow-beauty), *Rhexia salicifolia* (panhandle meadow-beauty), *Rhynchospora crinipes* (hairy-peduncled beakbush), *Rhynchospora thornei* (Thorne's beakbush), *Rudbeckia auriculata* (eared coneflower), *Rudbeckia heliopsidis* (sun-facing coneflower), *Salix floridana* (Florida willow), *Sarracenia purpurea* var. *montana* (mountain purple pitcherplant), *Sarracenia rubra ssp. gulfensis* (Gulf sweet pitcherplant), *Sarracenia rubra* ssp. *wherryi* (Wherry's sweet pitcherplant), *Schoenoplectus hallii* (Hall's bulrush), *Scuttelaria ocmulgee* (Ocmulgee skullcap), *Sideroxylon thornei* (swamp buckhorn or Georgia bully), *Solidago arenicola* (southern racemose goldenrod), *Sporobolus teretifolius* (wire-leaved dropseed), *Stellaria fontinalis* (water stitchwort), *Symphyotrichum puniceum* var. *scabricaule* (rough-stemmed aster), *Thalictrum debile* (southern meadowrue), *Trillium texanum* (Texas trillium), *Tsuga caroliniana* (Carolina hemlock), *Vicia ocalensis* (Ocala vetch), *Waldsteinia lobata* (lobed barren-strawberry), and *Xyris longisepala* (Kral's yellow-eyed grass). One of the species petitioned, *Solidago plumosa* (Yadkin River goldenrod), is already a current Federal candidate species and is, therefore, not considered in this finding.

On December 11, 2010, the Service received a second petition from Wild South to list *Tsuga caroliniana* (Carolina hemlock) as endangered under the Act and to designate critical habitat. On December 20, 2010, we provided a response to the petitioners acknowledging receipt of the petition and identifying it as a supplementary petition as *Tsuga caroliniana* was also included in the CBD petition to list 404 southeastern U.S. species. Wild South provided additional information on the species' life history, status and threats.

Of the 75 vascular plants identified above, 46 held previous Federal candidate status, prior to 1996 and the discontinuance of the category 2 and 3C classifications. These include the following: *Alnus maritima* (seaside alder), *Amorpha georgiana* var. *georgiana* (Georgia leadplant or Georgia indigo bush), *Balduina atropurpurea* (purple balduina or purple disk honeycombhead), *Baptisia megacarpa* (Apalachicola wild indigo), *Bartonia texana* (Texas screwstem), *Calamovilfa arcuata* (rivergrass), *Carex impressinervia* (impressed-nerved sedge), *Croton elliottii* (Elliott's croton), *Elytraria caroliniensis* var. *angustifolia* (narrowleaf Carolina scalystem), *Eriocaulon koernickianum* (small-headed pipewort), *Fimbristylis perpusilla* (Harper's fimbristylis), *Hartwrightia floridan* (Hartwrightia), *Hexastylis speciosa* (Harper's heartleaf), *Hymenocallis henryae* (Henry's spider-lily), *Hypericum edisonianum* (Edison's ascyrum), *Hypericum lissophloeus* (smooth-barked St. John's-wort), *Illicium parviflorum* (yellow anisetree), *Lilium iridollae* (panhandle lily), *Lindera subcoriacea* (bog spicebush), *Linum westii* (West's flax), *Lobelia boykinii* (Boykin's lobelia), *Lythrum curtissii* (Curtis's loosestrife), *Lythrum flagellare* (lowland loosestrife), *Macbridea caroliniana* (Carolina birds-in-a-nest), *Marshallia grandiflora* (Large-flowered Barbara's-buttons), *Minuartia godfreyi* (Godfrey's stitchwort), *Najas filifolia* (narrowleaf naiad), *Nufar lutea* ssp. *ulvacea* (West Florida cow-lily), *Nyssa ursina* (Bear tupelo or dwarf blackgum), *Physostegia correllii* (Correll's false dragonhead), *Potamogetan floridanus* (Florida pondweed), *Rhexia parviflora* (small-flower meadow-beauty), *Rhexia salicifolia* (panhandle meadow-beauty), *Rhynchospora crinipes* (hairy-peduncled beakbush), *Rhynchospora thornei* (Thorne's beakbush), *Rudbeckia auriculata* (eared coneflower), *Rudbeckia heliopsidis* (sun-facing coneflower), *Salix floridana* (Florida willow), *Sarracenia rubra* ssp. *wherryi* (Wherry's sweet pitcherplant), *Scuttelaria ocmulgee* (Ocmulgee skullcap), *Sporobolus teretifolius* (wire-leaved dropseed), *Stellaria fontinalis* (water stitchwort), *Thalictrum debile* (southern meadowrue), *Trillium texanum* (Texas trillium), *Vicia ocalensis* (Ocala vetch), *Waldsteinia lobata* (lobed barren-strawberry), and *Xyris longisepala* (Kral's yellow-eyed grass). The NatureServe global ranking of these 75 species ranges from subspecies T1, to T2, to T3 status and species G1, to G2, to G3, and G4.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Lists of Endangered and Threatened Wildlife and Plants (Lists). A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Listing actions may be warranted based on any of the above factors, singly or in combination.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the 374 species, as presented in the petition and other information available in our files, is substantial, thereby indicating that

listing any of the species in the petitioned action may be warranted. Our evaluation of this information is presented below. Our review of the species varied significantly depending on the amount of information presented in the petition and the amount of information available in our files. Because so little information was available in our files for many of these rare, locally endemic species, the information below summarizes only the information in the petition, unless noted otherwise.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition states that all species, except for one (*Oncidium undulatum,* Cape Sable orchid) identified in the petition are threatened by the present or threatened destruction, modification, or curtailment of their habitat or range. According to the petition, aquatic and riparian habitats in the Southeast have been extensively degraded by direct alterations of waterways such as impoundment, diversion, dredging and channelization, and draining of wetlands, and by land-use activities such as development, agriculture, logging, and mining (Benz and Collins 1997; Shute *et al.* 1997). More than one-third of the petitioned species have experienced drastic range reductions, and up to a 90 percent range loss for many of the petitioned mussels and snails (Pyne and Durham 1993; Neves *et al.* 1997; NatureServe 2008). According to the petition, because many of the aquatic species in the Southeast are very narrow endemics or have experienced a dramatic range reduction, remaining populations are now susceptible to extinction from even relatively minor habitat losses (Herrig and Shute 2002).

The petition asserts that habitat loss and degradation are driving the decline of reptiles, mollusks, and other aquatic taxa. Buhlman and Gibbons (1997) found that 36 percent of analyzed imperiled aquatic reptiles are threatened because of the ''continuing, cumulative abuse sustained by river systems,'' and that at least 22 southeastern reptile taxa have declined due to degradation of rivers and streams. Habitat degradation and fragmentation is also asserted to be the primary cause of imperilment for southeastern mollusks (Neves *et al.* 1997; Lysne *et al.* 2008); mammals (Harvey and Clark 1997); fish (Warren *et al.* 1997); and plants (Stein *et al.* 2000).

Physical Alteration of Aquatic Habitats

Impoundment

According to the petition, nearly half of the petitioned species are threatened by impoundment, including 83 percent of the fishes and 67 percent of the mollusks. Dams modify habitat and aquatic communities both upstream and downstream of the impoundment (Winston *et al.* 1991; Mulholland and Lenat 1992; Soballe *et al.* 1992). Upstream of dams, habitat is flooded and in-channel conditions change from flowing to still water, with increased depth, decreased levels of dissolved oxygen, and increased sedimentation. Sedimentation alters substrate conditions by filling in interstitial spaces between rocks, which provide habitat for many species (Neves *et al.* 1997). Downstream of dams, flow regime fluctuates (with resulting fluctuations in water temperature and dissolved oxygen levels), the substrate is scoured, and downstream tributaries are eroded (Schuster 1997; Buckner *et al.* 2002). Negative ''tailwater'' effects on habitat extend many kilometers downstream (Neves *et al.* 1997). Dams fragment habitat of aquatic species by blocking corridors for migration and dispersal, resulting in population isolation and heightened susceptibility to extinction (Neves *et al.* 1997). Dams also preclude aquatic organisms from escaping polluted waters and accidental spills (Buckner *et al.* 2002).

As of the early 1990s, there were 144 major reservoirs in the Southeast, including 26 in Tennessee, 19 each in Alabama and North Carolina, and 17 in Kentucky (Soballe *et al.* 1992). There are 36 dams on the mainstem and major tributaries of the Tennessee River (Neves *et al.* 1997), resulting in the impoundment of more than 20 percent of the Tennessee River and its major tributaries (Shute *et al.* 1997). The Tennessee and Cumberland River drainages have approximately 70 major dams and reservoirs (Buckner *et al.* 2002). Waterways in Alabama have also been extensively impounded, with 16 major lock and dam structures on six rivers, 21 hydroelectric power dams, and over 20 public water supply impoundments (Buckner *et al.* 2002). The Coosa and Tallapoosa Rivers in Georgia and Alabama have been ranked among the most imperiled rivers in the nation due to damming (Buckner *et al.* 2002).

The petition asserts that, in addition to rivers, damming of streams and springs is also extensive throughout the Southeast (Etnier 1997; Morse *et al.* 1997; Shute *et al.* 1997). Noss *et al.* (1995) reports that practically every stream in the Mississippi Alluvial Plain has been channelized, levied, or hydrologically altered. Small streams on private lands are regularly dammed to create ponds for cattle, for irrigation, for recreation, and for fishing, with significant ecological effects due to the sheer abundance of these structures (Morse *et al.* 1997).

In Florida and other Southeast States, impoundment of large coastal tributaries has severely curtailed fish spawning runs (Gilbert 1992). Impoundment blocks migratory routes of fish and covers spawning habitat with silt (Etnier 1997). According to the petitioners, dams and the resultant substrate changes have imperiled disproportionately high numbers of benthic fishes (Warren *et al.* 1997).

Changes in the fish community jeopardize the survival of mussels because mussels are dependent on host fish to successfully reproduce, with some species of mussels being dependent on specific species of fish (Bogan 1993, 1996). If the fish species upon which a mussel is dependent to host its larvae goes extinct, then the mussel becomes ''functionally extinct,'' even when there are surviving long-lived individuals (Bogan 1993). Impoundments can also separate mussel populations from host fish populations, resulting in the eventual extinction of the mussel species (Bogan 1993, 1996). The loss of mussels can in turn negatively affect fish, because some species of fish use empty mussel shells as nest sites (Bennett *et al.* 2008).

The petition claims that impoundments are also one of the primary reasons for the decline in crustaceans in the Southeast (Schuster 1997), in aquatic insects (Herrig and Shute 2002), and in forest-associated bird species, particularly for species with narrow niches and low tolerance to disturbance (Dickson 2007).

Dredging and Channelization

According to the petition, dredging and channelization are extensively employed throughout the Southeast for flood control, navigation, sand and gravel mining, and conversion of wetlands into croplands (Neves *et al.* 1997; Herrig and Shute 2002). Many rivers are continually dredged to maintain shipping channels (Abell *et al.* 2002). Dredging and channelization modify and destroy habitat for aquatic species by destabilizing the substrate, increasing erosion and siltation, removing woody debris, decreasing habitat heterogeneity, and stirring up contaminants that settle onto the substrate (Hart and Fuller 1974; Williams *et al.* 1993; Buckner *et al.*

2002; Bennett *et al.* 2008). Channelization can also lead to headcutting, sedimentation, and actual removal of mussels from their beds during dredging operations (Hart and Fuller 1974; Williams *et al.* 1993).

The petition also claims that dredging and channelization also threaten imperiled fish, reptiles, crustaceans, and other species. Dredging removes woody debris, which provides cover and nest locations for fish such as the frecklebelly madtom (Bennett *et al.* 2008). Flood control projects and channel maintenance operations in Mississippi threaten aquatic species in the Yazoo Basin (Jackson *et al.* 1993), including the petitioned Yazoo crayfish. Dredging and channelization are also known to be the primary reason for imperilment of southeastern crustaceans (Schuster 1997), and to contribute to the decline of southeastern turtles (Buhlmann and Gibbons 1997). Many of the imperiled turtle species, including the highly imperiled map turtles, are threatened by the removal of woody debris, on which they depend for basking.

Water Development and Diversion and Decreased Water Availability

According to the petition, in the Southeast, demands for freshwater for electricity production, irrigation, agriculture, and industrial and residential development are increasing (Herrig and Shute 2002; Hutson *et al.* 2005; Lysne *et al.* 2008). Limited water supply is already a source of conflict in Tennessee, Alabama, and Georgia in particular, where rapidly growing metropolitan areas such as Atlanta, Birmingham, and Nashville have drastically increased the demand for water for residential and industrial uses (Buckner *et al.* 2002). The construction of numerous large Confined Animal Feeding Operations throughout the Southeast has led to an increased demand for inter-basin water transfers (Buckner *et al.* 2002). Increasing drought due to global climate change is expected to exacerbate the threat of limited water availability to aquatic and riparian species in southeastern States (Karl *et al.* 2009). Water demands to support gas-fired steam plants for electricity generation have increased in the Southeast. These plants require millions of gallons of water per day, and return only roughly one-fifth of that water back to the waterways, and even this water tends to be thermally polluted and may be inadequate to meet the dissolved oxygen needs of aquatic species (Buckner *et al.* 2002).

The petition also asserts that surface diversion of streams threatens southeastern aquatic species (Etnier 1997; Abell *et al.* 2000; Buckner *et al.* 2002; Herrig and Shute 2002), and that an increasing threat to southeastern species is the growing practice of damming small headwater streams to supply water for municipalities (Buckner *et al.* 2002). Water withdrawals reduce base flows, decreasing habitat availability for aquatic species, and the reduced water volume also increases the concentration of pollutants, posing another threat to species (Abell *et al.* 2000; Herrig and Shute 2002).

According to the petition, in addition to rivers and streams, many southeastern springs have been drastically altered to supply water for human uses (Etnier 1997). Spring development and diversion can alter flow regime and water quality parameters, lead to substrate disturbance and erosion, and alter the substance and composition of vegetative cover with resultant effects on freshwater fauna (Shepard 1993; Frest and Johannes 1995; Frest 2002). An additional threat to southeastern species is groundwater overdraft (pumpage of groundwater in excess of safe yields), which threatens spring flow and species that are dependent on consistent spring flow conditions (Strayer 2006). The petitioners also assert that the dewatering of groundwater systems in the Southeast threatens rare species of isopods, amphipods, fish, crayfish, and amphibians that are dependent on stable spring and cave environments (Herrig and Shute 2002).

Loss of Wetlands

According to the petition, through the mid-1980s, wetlands were lost in the Southeast as a rate of over 385,000 acres per year (Hefner and Brown 1984). In Florida alone, more than 9 million acres of wetlands had been lost by that time (Cerulean 1991). In Arkansas 6 million acres of Mississippi Delta wetlands had been converted to agricultural use by the mid-1980s (Smith *et al.* 1984). In the Lower Mississippi Valley Region, more than one-third of existing wetlands were destroyed from 1950 to 1970 (Mitsch and Gosselink 1986), with over 185,000 acres of wetlands continuing to be lost annually through the mid-1980s in this region (Tiner 1984). In Tennessee, up to 90 percent of upland wetlands on the Highland Rim have been destroyed, as have more than 90 percent of Appalachian bogs in the Blue Ridge Province (Pyne and Durham 1993). The destruction of pocosins (evergreen shrub bogs) has been extensive throughout the Southeast, with greater than 90 percent loss in Virginia, nearly 70 percent loss in North Carolina, and nearly 70 percent loss on the Southeastern Coastal Plain (Noss *et al.* 1995).

The petition asserts that loss, degradation, and fragmentation of wetland habitat have negatively affected numerous southeastern freshwater species, and natural wetland habitats continue to be lost, placing more species at risk (Dodd 1990; Benz and Collins 1997; Semlitsch and Bodie 1998; Herrig and Shute 2002). Vegetated permanent wetlands are among the most jeopardized habitats in the Southeast, with the result that fish families that are dependent on these habitats are disproportionately imperiled, such as the pygmy sunfishes (Etnier and Starnes 1991; Cubbage and Flather 1993; Dickson and Warren 1994; Warren *et al.* 1994). According to petitioners, wetland destruction has also destroyed habitat for many bird species (Dickson 1997); aquatic reptile species that depend on standing water habitats (Herrig and Shute 2002),; and amphibians (LaClaire 1997), such as the Gulf Hammock dwarf siren (Amphibia Web 2009). Because many reptile and amphibian populations exist as metapopulations that rely on habitat connectivity to maintain genetic structure and provide recolonization opportunities in the event of localized extirpations, habitat fragmentation and isolation threaten their regional persistence by cutting off opportunities for migration and dispersal and by magnifying the likelihood of inbreeding depression and reproductive failure due to random environmental perturbation (Buhlmann and Gibbons 1997; Semlitsch and Bodie 1998).

Land Use Activities That Decrease Watershed Integrity

The petition asserts that southeastern aquatic species are threatened not only by direct physical alteration of waterways, but also by activities in the watershed that directly or indirectly degrade aquatic habitats such as residential, commercial, and industrial development; agriculture; logging; mining; alteration of natural fire regime; and recreation. Land use activities can alter water chemistry, flow, temperature, and nutrient and sediment transport, and can interfere with normal watershed functioning (Folkerts 1997).

Residential and Industrial Development and Human Population Growth

According to the petition, development threatens two-thirds of the petitioned species. The primary threat to the petitioned dragonfly, the purple skimmer, is lakeshore development. The Waccamaw fatmucket, a petitioned

mussel, is threatened primarily by increasing development in its watershed. Also, according to the petition, the Carolina pygmy sunfish, Chauga crayfish, and many other petitioned species are also threatened primarily by development.

The human population nearly doubled in the Southeast between 1970 and 2000 (Folkerts 1997). Southeastern states continued to experience significant human population growth from 2000 to 2007, with the population of Georgia increasing by 17 percent, Florida by 14 percent, North Carolina by 13 percent, South Carolina by 10 percent, Virginia by 9 percent, and Tennessee by 8 percent (U.S. Census Bureau 2009). Metropolitan areas in the Southeast are among the fastest growing in the nation (Dodd 1997).

Population growth threatens biodiversity through an increased demand for food, water, and other resources. The strong geographic focus of development around freshwaters concentrates human ecological impacts on freshwater ecosystems more than on any other part of the landscape (Strayer 2006). Throughout the Southeast, increased development is creating water supply problems, stressing available water resources, and polluting aquatic habitats (Seager *et al.* 2009). Global climate change is expected to lead to fluctuating water supplies in the Southeast, and in conjunction with increasing human demand for freshwater, to place many aquatic at heightened risk of extinction (Karl *et al.* 2009).

The petition asserts that urbanization and residential, commercial, and industrial development threaten aquatic species in both direct and indirect ways. Habitat is directly lost and fragmented through land conversion and through water withdrawal and diversion (Benz and Collins 1997). Predation increases as populations of pets and synanthropic species ecologically associated with humans increase (Marzluff *et al.* 2001). Point-source pollution from industry and runoff from parking lots, roofs, roads, and lawns degrade water quality and have lethal and sub-lethal effects on aquatic species. Urban runoff is associated with declines in macroinvertebrate diversity and with decreased mussel growth rates, and urban land use classes are associated with impairment of fish and macroinvertebrate communities (Soucek *et al.* 2003; Carlisle *et al.* 2008). Amphibians and reptiles are particularly threatened by development. Siltation and leachate from road runoff can be lethal to larval amphibians and other aquatic organisms (Dodd 1997). The construction of roads increases mortality and leads to population isolation and the disruption of the metacommunity structure on which the long-term population persistence of many herptile species depends (Buhlman and Gibbons 1997). Noise and light from roads and developments can interfere with behavior patterns and disrupt breeding and feeding activities, particularly for amphibians (Dodd 1997). Amphibian species' richness is lower in urbanized areas, as many species cannot persist in urbanized sites (Delis 1993; Herrig and Shute 2002).

According to the petition, habitat loss and degradation due to development is generally permanent and poses an increasing threat to southeastern aquatic species. Folkerts (1997) reports that particularly in the Southeast, development threatens aquatic species more than in other areas due to lax enforcement of environmental laws in the region.

Recreation

According to the petition, the increased human population is increasing the demand for recreational developments and activities. Housing developments, strip malls, and resorts are being constructed in very rural areas, and small towns are now burgeoning in previously undeveloped areas in the Southeast including, the Knoxville-Chattanooga suburban corridor, on the Cumberland Plateau, in the Cahaba River headwaters outside Birmingham, and in the Mobile-Tensaw Delta (Buckner *et al.* 2002). Many rapidly developing small communities are constructing dams on headwater streams, often in areas that were recently remote and inaccessible, with resultant impacts on aquatic species (Buckner *et al.* 2002). The development of housing and recreational facilities on lakeshores and in riparian areas results in the degradation of water quality and aquatic habitat (Tennessen 1997). For example, Morse *et al.* (1997) report the loss of rare stonefly species in a stream in North Carolina following the development of summer homes.

The petition asserts that recreational developments and activities threaten aquatic species by fostering air and water pollution, litter, and potentially high densities of recreationists (Houston 1971; White and Bratton 1980). Recreation can cause trampling of organisms and vegetation (Little 1975). Local habitat changes caused by trampling include simplification of vegetation and soil compaction, which can result in overall loss of habitat diversity (Speht 1973; Liddle 1975). Off-road vehicle use can lead to severe degradation of aquatic and riparian habitats through trampling of organisms, destruction of vegetation, erosion, and degraded water quality (Wuerthner 2007). According to the petitioners, off-road vehicle use threatens imperiled mussels (Hanlon and Levine 2004) and reptiles (Herrig and Shute 2002). Southeastern aquatic species are also alleged by the petitioners to be threatened by other forms of motorized recreation, such as motorized boats and jet skis, which cause oil and gas contamination and bank erosion (Buckner *et al.* 2002). Garber and Burger (1995) also document the extirpation of a turtle population in a protected area due to occasional poaching.

Decreased water quality, trampling, or other recreational impacts purportedly threaten 22 percent of the petitioned species including the Bigcheek cave crayfish, Blue Spring hydrobe snail, and small-flower meadow-beauty.

Logging

The petition asserts that southeastern aquatic and riparian species are threatened by the loss of forests and the negative effects of these losses on water quality and aquatic habitats that result from logging activities and canopy removal. The Southeast now supplies nearly 70 percent of the nation's pulp and paper products (Buckner *et al.* 2002). According to Folkerts (1997), the rate of deforestation in the Southeast at that time exceeded that of any tropical area of comparable size. The Tennessee, Cumberland, and Mobile basins have experienced a drastic increase in large clearcutting operations and chip mills, with 1.2 million acres of forest being cut annually to supply 150 regional chip mills, two-thirds of which have been built since the 1980s (Buckner *et al.* 2002). In the area surrounding Great Smoky Mountain National Park, the rate of logging doubled from 1980 to 1990 (Folkerts 1997). Of the 70 million acres of longleaf pine forest which once covered over 40 percent of the Southeastern Coastal Plain, only 1 to 2 percent remains, and the remnant acreage is fragmented and ''poorly-managed'' (Noss *et al.* 1995; Dodd 1997). Clearcutting on the Coastal Plain has affected ''virtually every aquatic habitat in the area'' (Folkerts 1997).

According to the petition, logging has many direct and indirect negative effects on aquatic biota across taxa. Erosion from poor forestry practices degrades water quality (Williams *et al.* 1993). Increased sedimentation from logging can suffocate aquatic snails and their eggs, preclude their ability to feed, and extirpate populations (Frest and Johannes 1993). Increased

sedimentation is also harmful to freshwater mussels (Neves *et al.* 1997). Clearcutting and conversion of deciduous forests to pine plantations increases sedimentation and reduces the input of large woody debris and leaf litter into streams, which are necessary to provide microhabitat and food for aquatic organisms (Morse *et al.* 1997; Herrig and Shute 2002). Clearcutting can lead to the disappearance of caddisflies and mayflies, with ramifications at higher levels of the food web (Morse *et al.* 1997). Amphibian diversity and abundance is reduced by clearcutting and the conversion of deciduous forests to pine plantations (Dodd 1997; Herrig and Shute 2002). Aquatic-breeding amphibians, which depend on ephemeral ponds or which are dependent on forested habitats to complete their life cycle or both, are particularly threatened by logging activities (Dodd 1997). Herbicides used after timber harvests also negatively affect amphibians and other aquatic organisms (Dodd 1997; Herrig and Shute 2002).

According to the petition, 51 percent of the petitioned species are threatened by logging. Logging is the primary threat to the newly discovered patch-nosed salamander, and to many of the petitioned crayfishes, including the Irons Fork burrowing crayfish, Kisatchie painted crayfish, and pristine crayfish. The petitioners assert that logging also threatens the petitioned dragonflies, including Westfall's clubtail and the Ozark emerald.

Agriculture and Aquaculture

According to the petition, southeastern aquatic species are also threatened by the loss and degradation of habitat due to poor agricultural practices. Intensive agriculture began in the Southeast in the 1930s, and agriculture continues to extensively impact southeastern aquatic ecosystems (Neves *et al.* 1997). The petitioners assert that agriculture in the Southeast has a tremendous impact on aquatic habitats both due to the extent of farmland and to farming practices (Buckner *et al.* 2002; Herrig and Shute 2002). In the Tennessee, Cumberland, and Mobile River basins, for example, farms cover nearly half the landscape. Throughout the Southeast, fields are commonly plowed to the edges of waterways, causing sedimentation and bank collapse and facilitating the runoff of fertilizers and pesticides (Buckner *et al.* 2002). Both traditional farming practices and confined animal feeding operations contribute to water quality degradation and the imperilment of indigenous biota in the Southeast through erosion, sedimentation, and chemical and nutrient pollution from point and non-point sources (Patrick 1992; Morse *et al.* 1997; Neves *et al.* 1997; Herrig and Shute 2002).

According to the petition, 50 percent of the petitioned species are threatened by conversion of their habitat to agricultural use or by agricultural runoff, including the striated darter, Logan's agarodes caddisfly, Sevier snowfly, and Tennessee clubtail. Agricultural land uses have been associated with impairment of fish and macroinvertebrate communities (Herrig and Shute 2002), communities of freshwater mollusks (Williams *et al.* 1993; Neves *et al.* 1997), and threats to imperiled amphibians (Herrig and Shute 2002).

Many of the petitioned species are allegedly threatened from confined animal feeding operations (CAFOs), including the Carolina madtom, corpulent hornsnail, and the Neuse River waterdog. Confined animal feeding operations and feedlots have caused extensive degradation of southeastern aquatic ecosystems (Neves *et al.* 1997; Buckner *et al.* 2002; Mallin and Cahoon 2003). The number of CAFOs in the Southeast has increased drastically since 1990, as livestock production has undergone extensive industrialization (Buckner *et al.* 2002; Mallin and Cahoon 2003). Alabama and Arkansas are now the nation's leading poultry producers, with Florida, Georgia, and Kentucky also among the top 10 States for poultry production (U.S. Census Bureau 2009). Poultry CAFOs are also abundant in North Carolina, Mississippi, and Virginia (Mallin and Cahoon 2003). There are extensive swine CAFOs in the North Carolina Coastal Plain, and North Carolina is now the nation's second largest pork producer (Mallin and Cahoon 2003; U.S. Census Bureau 2009). Confined animal feeding operations threaten aquatic species both because of the vast amounts of fresh water necessary to support their operation and due to pollution (Buckner *et al.* 2002). Confined animal feeding operations house thousands of animals and produce a large amount of waste, which enters the environment either by being directly discharged into streams or constructed ditches, stored in open lagoons, or applied to fields in wet or dry form (Buckner *et al.* 2002; Mallin and Cahoon 2003; Orlando *et al.* 2004). Confined animal feeding operation wastes contain nutrients, pharmaceuticals, and hormones, and result in eutrophication (a choking of waters by excessive algae growth which has been stimulated by fertilizers or sewage) of waterways, toxic blooms of algae and dinoflagellates, and endocrine disruption in downstream wildlife (Mallin and Cahoon 2002; Orlando *et al.* 2004).

Both livestock holding lots and landscape grazing degrade habitats in the Southeast, according to the petitioners (Buckner *et al.* 2002; Herrig and Shute 2002). Several southeastern States produce large amounts of cattle and horses feeding them via both grazing and holding lots (Buckner *et al.* 2002; U.S. Census Bureau 2009). Livestock are generally allowed to wade directly into streams, trampling habitat and resulting in erosion and nutrient contamination (Buckner *et al.* 2002). The effects of livestock grazing on stream and riparian ecosystems are well documented and include negative effects on water quality and quantity, channel morphology, hydrology, soils, instream and streambank vegetation, and aquatic and riparian wildlife (Belsky *et al.* 1999). According to Frest (2002), snails and their habitats are harmed through direct trampling, soil compaction, erosion, water siltation and pollution, and drying up of springs and seeps. The petitioners claim that 14 percent of the petitioned species are threatened by grazing, including the Virginia stone (stonefly), Barrens darter, Cherokee clubtail (dragonfly), and many plants, including the eared coneflower.

The petition alleges that aquaculture poses an additional threat to aquatic species in the Southeast. According to Tucker and Hargreaves (2003), catfish farming is the largest aquaculture enterprise in the United States, with 95 percent of production occurring in Alabama, Arkansas, Louisiana, and Mississippi. Similarly, crayfish farming in Louisiana is the nation's second largest aquaculture enterprise, with over 49,000 hectares of crayfish ponds (Holdich 1993). According to the petitioners, aquaculture threatens aquatic habitats through habitat conversion; the withdrawal, diversion, or impoundment of natural waterways to support operations; and the release of effluent to waterbodies (Naylor *et al.* 2001). Water quality degradation threatens southeastern aquatic insect populations (Herrig and Shute 2002). Impoundments and diversions alter water chemistry and flow, and can be detrimental to native mollusks and fishes (Morse *et al.* 1997; Neves *et al.* 1997). The construction of shrimp farms in wetlands and estuaries also destroys and degrades habitat for native aquatic species (Hopkins *et al.* 1995).

Mining and Oil and Gas Development

According to the petition, mining for coal, gravel, limestone, phosphate, iron, and other raw materials poses a dire threat to many aquatic species in the Southeast (Dodd 1997; Buckner 2002), and 29 percent of the petitioned species are threatened by mining and oil and gas development. Extensive strip mining for coal occurs in West Virginia, Kentucky, Virginia, Tennessee, and Alabama (Dodd 1997). As of 2004, more than 1.1 million acres of land in Appalachia were undergoing active mining operations (Loveland *et al.* 2003), and the EPA projects that from 1992 to 2013, 761,000 acres of Appalachian forest will be lost to surface coal mining (Pomponio 2009). Up to 23 percent of the land area of some counties in Kentucky and West Virginia has been permitted for surface coal mining (U.S. Government Accountability Office 2009). Mining increases the potential for extreme flooding events, and reclamation does not restore pre-mining hydrologic characteristics or ecological functions (Townsend *et al.* 2009).

Mining often occurs directly through streams or ponds, and mine wastes are pushed directly into streams and rivers (Dodd 1997; EPA 2005). From 1992 to 2002, more than 1,200 miles of Appalachian streams were buried or degraded by mountaintop removal coal mining (EPA 2005). This figure does not incorporate the thousands of miles of downstream reaches that have been substantially degraded by sedimentation and chemical pollution from coal mining (Palmer and Bernhardt 2009; Pomponio 2009; Palmer *et al.* 2010). According to the petitioners, in the Clinch and Powell watersheds of southwestern Virginia, where the highest concentration of imperiled species in the continental United States occurs (Stein *et al.* 2000), there were 287 active coal-mining point source discharges as of 2002 (Diamond *et al.* 2002), which are degrading habitat for imperiled species (Ahlstedt *et al.* 2005). The petitioners allege that 30 of the petitioned species are specifically threatened by mountaintop removal.

Coal mining negatively impacts aquatic species through direct habitat destruction, decreased water availability, variations in flow and thermal gradients, and chronic and acute pollution of surface and ground water (FWS 1996; Neves *et al.* 1997; Houp 1993; Pond *et al.* 2008; Palmer and Bernhardt 2009; Pomponio 2009; Wood 2009; Palmer *et al.* 2010). Pollution from mining adversely impacts invertebrates and vertebrates, and leads to less diverse and more pollution-tolerant species (Naimo 1995; Cherry *et al.* 2001; EPA 2005; Lemly 2009; Pomponio 2009). The petitioners allege that surface coal mining and associated road building increase human access to imperiled species, which can lead to poaching and contribute to the spread of invasive species (FWS 1996). Surface coal mining also causes long-term changes in land use and local ecology, and threatens the long-term viability of populations due to habitat fragmentation (FWS 1996).

The petition alleges that coal mining negatively impacts diatoms (a major group of algae) and macroinvertebrates (Serveiss 2001; Locke *et al.* 2006; Carlisle *et al.* 2008; Pond *et al.* 2008), amphibian diversity and abundance (EPA 2005; Wood 2009; Palmer and Bernhardt 2009), and the index of fish biotic integrity (Diamond and Serveiss 2001). The petition states that coal mining is also reported to cause reproductive failure in riparian birds (Lemly 1985; Ohlendorf 1989).

According to the petition, other forms of mining and oil and gas development are also causing severe degradation of aquatic habitats: In-stream gravel mining and rock removal fragment and destroy habitat for aquatic insects, crayfish, mussels, and fish (Buckner *et al.* 2002); and sand and gravel mining have been associated with both on- and off-site mussel extirpation (Hartfield 1993), and with decreased downstream mussel growth rates (Yokley 1976). The petitioners allege that many species are threatened by sand and gravel mining, including the cobblestone tiger beetle, bluestripe darter, hellbender (salamander), and many mussels and snails. Historic phosphate and iron mines resulted in precipitous declines in mussel populations (Ortmann 1924). Mining of industrial minerals such as kaolin, mica, and feldspar also results in loss and degradation of habitat for aquatic species (Tennessee Valley Authority 1971; EPA 1977; Duda and Penrose 1980). The petition alleges that kaolin mining threatens the petitioned mussel, the Alabama spike, and the petitioned fish, the robust redhorse, and that oil and gas development threatens many of the petitioned mussels.

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

The petition stated that all 15 amphibians petitioned (13 of which are subjects of this finding) were threatened by overutilization for commercial, recreational, scientific, or educational purposes; in addition this factor threatens 1 beetle (Cobblestone tiger beetle), 2 birds (Florida sandhill crane and black rail), 1 butterfly (rare skipper), 1 crayfish (Big Blue Springs Cave crayfish), 2 dragonflies (Septima's clubtail and Appalachian snaketail), 5 fish (northern cavefish, Carolina pygmy sunfish, robust redhorse, orangefin madtom, and bluehead shiner), 6 mussels (brook floater, brother spike, Suwannee moccasinshell, Tennessee clubshell, warrior pigtoe, and pyramid pigtoe), 11 reptiles (Kirtland's snake, western chicken turtle, Florida Keys mole skink, Barbour's map turtle, Escambia map turtle, Pascagoula map turtle, black-knobbed map turtle, Alabama map turtle, striped mud turtle—lower Florida Keys, Florida red-bellied turtle—Florida panhandle, and northern red-bellied cooter), and 7 vascular plants (*Baptisia megacarpa, Epidendrum strobiliferum, Hymenocallis henryae, Illicium parviflorum, Lilium iridollae, Oncidium undulatum, and Sarracenia purpurea* var. *montana*).

The petition alleges overutilization is the primary threat for the hellbender salamander, which is commonly killed by fishermen. Collection for the pet trade threatens a few of the petitioned fishes, crayfishes, and amphibians. Historical overuse greatly threatened many of the petitioned mussels, fishes, and the Florida sandhill crane. Throughout the Southeast, reptiles are exploited for use as pets or food, or are killed for recreational purposes, which may all cause significant population declines. The petitioners allege that many southeastern turtle species, such as the Florida red-bellied turtle, Pascagoula map turtle, Barbour's map turtle, and black-knobbed map turtle, are threatened by over-collection because they are commonly harvested for food, the pet trade, or recreation. Several southeastern turtle species are being driven to extinction by unregulated commercial harvest. The petition alleges that the States of Arkansas, Kentucky, Georgia, Louisiana, and Tennessee allow unlimited harvest of freshwater turtles. The international trade in turtles for use as food, as pets, or in traditional medicine is extensive and largely unregulated (Buhlman and Gibbons 1997; Sarma 1999). Records indicate that the trade in live turtles from the United States to China is thousands of tons per year. The Tennessee Wildlife Resources Agency reports that more than 25,000 turtles were reported as harvested in Tennessee from 2006 to 2007. Overutilization of imperiled turtle species is especially problematic because the reproductive

success of long-lived reptile species is dependent on high adult survivorship, and population declines occur when adults are harvested (Brooks *et al.* 1991; Heppell 1998; Pough *et al.* 1998; Congdon *et al.* 1993, 1994).

Over-collection and recreational killing are also a threat to some southeastern snake and lizard species (Gibbons *et al.* 2000; Herrig and Shute 2002). The Kirtland's snake, and the Florida Keys mole skink are all threatened by over collection (NatureServe 2008).

The petition alleges that southeastern mussels are also threatened by overutilization, although to a lesser extent than in the past (Neves *et al.* 1997). The harvest of southeastern mussels for commercial purposes is well documented (Anthony and Downing 2001; Williams *et al.* 2008). Mussels are collected for their pearls, meat, and shells, and many populations of mussels have been depleted by harvest in the last 200 years (Strayer 2006). Although mussel fisheries targeted abundant species, the historical bycatch of rare species was likely substantial (Strayer 2006). Mussel collections declined by mid-century, but a resurgence in the commercial harvest has occurred since the 1960s to supply nucleus seeds for the cultured pearl trade (Ward 1985; Williams *et al.* 1993). In 1991 and 1992, 570 tons of shells were harvested from the Wheeler Reservoir on the Tennessee River (Williams *et al.* 2008). Most harvested mussels are common species, but bycatch remains a threat to native mussels.

Imperiled native mussels are threatened not only by the amount of harvest, but also by the method used to collect shells, which when conducted non-selectively, can result in substantial bycatch of non-target species and juveniles (Williams *et al.* 1993). Although unwanted mussels are thrown back, Sickel (1989) found that mortality of undersized mussels that are thrown back may be as high as 50 percent. Very rare species of mussels are also threatened by over-collection from shell collectors and biologists for biological collections. Overutilization for biological collections may have contributed significantly to the decline of the Suwannee moccasinshell (NatureServe 2008).

Other southeastern taxa are also threatened by overexploitation, including fish, amphibians, crayfish, butterflies, and plants. Amphibians are threatened by over-collection for use as food, for the pet trade, and for the biological and medicinal supply markets (Dodd 1997; Amphibia Web 2009). Southeastern fish and crayfishes are vulnerable to overutilization. Crayfishes are threatened by collection for use as bait or food (Herrig and Shute 2002). The Carolina pygmy sunfish (*Elassoma boelhkei*) is threatened by over-collection for the pet trade (NatureServe 2008). Collection of invertebrates for bait or the pet trade can deplete populations (Strayer 2006). Collection also threatens the rare skipper (*Problema bulenta*) (NatureServe 2008). White *et al.* (2002) documented the removal of an entire population of Panhandle lily (*Lilium iridollae*) from the Conecuh National Forest by horticultural collectors.

The petition alleges that the impacts of overutilization compound the threats facing imperiled southeastern species whose populations have already been reduced due to habitat loss or other factors. Overutilization may drive species that are already struggling to survive to extinction.

Factor C. Disease or Predation

The petition stated that disease or predation threatened 11 amphibians addressed in this finding (streamside salamander, one-toed amphiuma, hellbender, Cumberland dusky salamander, seepage salamander, Chamberlain's dwarf salamander, Oklahoma salamander, Tennessee cave salamander, West Virginia Spring salamander, Georgia blind salamander, and Neuse River waterdog), 3 birds (MacGillivray's seaside sparrow, Florida sandhill crane, and black rail), 8 fish (Carolina pygmy sunfish, candy darter, paleback darter, Shawnee darter, Barrens topminnow, robust redhorse, Carolina madtom, and bluehead shiner), 1 mammal (Sherman's short-tailed shrew), 6 mussels (Tennessee heelsplitter, Cumberland moccasinshell, Tennessee clubshell, Tennessee pigtoe, purple lilliput, and Savannah lilliput), 6 reptiles (Kirtland's snake, Barbour's map turtle, Escambia map turtle, Pascagoula map turtle, Florida red-bellied turtle, and northern red-bellied cooter), and 6 vascular plants (*Lilium iridollae* (Panhandle lily), *Najas filifolia* (narrowleaf naiad), *Rudbeckia auriculata* (eared coneflower), *Schoenoplectus hallii* (Hall's bulrush), *Sideroxylon thornei* (swamp buckhorn or Georgia bully), Tsuga *caroliniana* (Carolina hemlock)).

Disease

According to the petition, the spread of disease has contributed to the decline of aquatic species globally and in the southeastern United States (Daszak *et al.* 1999; Corser 2000; Gibbons *et al.* 2000; Cunningham *et al.* 2003). Amphibians, in particular, have been decimated by the spread of disease (Kiesecker *et al.* 2004). Numerous diseases are contributing to amphibian declines, including infections of fungi (*Batrachochytrium dendrobatidis* ''chytrid''; *Saprolegnia*), ranavirises, iridovirises, mesomycetozoea, protozoa, helminthes, and undescribed diseases (Dodd 1997; Daszak *et al.* 1999; Briggs *et al.* 2005; Davis *et al.* 2007; Peterson *et al.* 2007). Chytrid fungus affects not only frogs but has also now been reported in both aquatic and terrestrial salamanders (Davidson *et al.* 2003; Cummer *et al.* 2005; Padgett-Flohr and Longcore 2007). The decline of map turtles, musk turtles, snapping turtles, and pond turtles is partially attributable to disease (Dodd 1988; Buhlmann and Gibbons 1997). Southeastern freshwater fishes are also threatened by diseases, which are being spread by aquaculture operations and in shipments between fish hatcheries (Kautsky *et al.* 2000; Naylor *et al.* 2001; Strayer 2006; Green and Dodd 2007).

The petition alleges that other threats exacerbate the vulnerability of southeastern aquatic fauna to disease and population decline. The hellbender, which is threatened by both habitat loss and overuse, is also threatened by disease. Reptile declines have also been attributed to disease (Diemer Berish *et al.* 2000; Gibbons *et al.* 2000). In freshwater fishes, stress-related diseases are prevalent in polluted rivers, where chronic, sub-lethal pollution has increased the susceptibility of organisms to infection (Moyle and Leidy 1992).

Predation

According to the petition, predation threatens several of the petitioned species, including reptiles, amphibians, birds, plants, fishes, crayfishes, and mollusks. Heavy predation of turtle nests by raccoons can be a primary factor limiting recruitment of imperiled turtle populations (Browne and Hecnar 2007). At least two of the petitioned bird species are threatened by predation. MacGillivray's seaside sparrow is threatened by predation from rice rats (Post and Greenlaw 1994). The black rail is threatened from predation from various species during high tides, when the rails are forced away from cover (Evans and Page 1986). Two of the petitioned plant species are threatened by predation. Hall's bulrush is threatened by predation from mute swans and Canada geese (McKenzie *et al.* 2007). The Panhandle lily is threatened by predation from cattle grazing and potentially by insect herbivory (Barrows 1989). Southeastern fishes, amphibians, and crayfishes are

threatened by predation from native and nonnative fishes and crayfishes (NatureServe 2008). The streamside salamander is threatened by predation from fish, flatworms, and water snakes (Petranka 1983; AmphibiaWeb 2009). Predation can contribute heavily to the decline of imperiled mussels because of their restricted distributions and small population sizes (NatureServe 2008, Rock pocketbook species account). Imperiled southeastern mussels are threatened by predation from fishes, muskrats, raccoons, otter, mink, turtles, and some birds (Neves and Odom 1989; Parmalee 1967; Snyder and Snyder 1969). A number of fish species, including catfishes (*Ictalurus* ssp. and *Amieurus* ssp.) and freshwater drum (*Aplodinotus grunniens*) consume large numbers of unionid mussels at certain life stages (NatureServe 2008). As populations of imperiled mussels continue to decline, predation becomes an increasing threat. For example, the only viable population of the Savannah lilliput in North Carolina is threatened by predation from raccoons (Hanlon and Levine 2004). According to the petition, the petitioned fish, Barrens topminnow, is threatened by predation from introduced mosquitofish.

Disease and predation, alone and in conjunction with other factors, pose serious threats to the survival of many of the petitioned species and are magnified by other environmental stressors such as habitat loss, pollution, invasive species, and climate change (Gibbons *et al.* 2000; Pounds *et al.* 2006).

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The petition states that inadequate regulatory mechanisms threaten all the petitioned species, with the following five exceptions: Linda's roadside-skipper, least crayfish, Broad River spiny crayfish, Chowanoke crayfish, and Tallapoosa orb.

Inadequacy of Existing Federal Regulatory Mechanisms

According to the petition, the Federal Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) provides a basic level of water quality protection for imperiled southeastern species, but is inadequate to ensure their continued survival. Pollution from point and non-point sources is causing ongoing degradation of water quality, current water quality standards are not effectively protecting sensitive species or sensitive developmental stages of species, and loss of stream and wetland habitat continues. The Environmental Protection Agency (EPA) and individual States regulate point sources of pollution under the National Pollution Discharge Elimination System (NPDES), under which point sources are licensed and maximum pollutant discharge concentrations are set. The NPDES system is not adequate to protect the petitioned species from the negative effects of pollution because permits may be issued with few restrictions, cumulative effects of all the point sources within a watershed are not taken into consideration when permits are issued, and State governments often lack the resources or political will to monitor and enforce permits (Buckner *et al.* 2002).

The petition claims that existing regulations are also inadequate to protect aquatic species from non-point sources of pollution such as agricultural, residential, and urban runoff. Agricultural runoff accounts for over 70 percent of impaired U.S. river kilometers, yet is largely exempt from permitting requirements (Neves *et al.* 1997). Existing regulatory mechanisms are also inadequate to protect southeastern aquatic species from accidental spills from retention ponds, which are used to store wastes from agriculture, coal-fired power plants, coal mining, and other activities (Herrig and Shute 2002), and to prevent the continued loss of stream and wetland habitat from fills. In Appalachia, from 1992 to 2002, the EPA permitted the filling of more than 1,200 miles of headwater streams for surface coal mining activities (EPA 2005). The permitted filling of streams for surface coal mining is causing permanent downstream pollution and loss of biodiversity (Neves *et al.* 1997; Pond *et al.* 2008; Pomponio 2009; Wood 2009; Palmer *et al.* 2010).

The permitted filling of wetlands is also ongoing. While section 404 of the CWA sets as a goal no net loss of wetlands, this is not a required outcome of permit decisions (Connolly *et al.* 2005). In fiscal year 2003, the U.S. Army Corps of Engineers issued 4,035 permits for the destruction of natural wetlands, while denying only 299 permits (Connolly *et al.* 2005). Lost wetlands are required to be replaced by mitigation wetlands, but mitigation wetlands often differ in structure, function, and community composition from the natural wetlands that are destroyed (Holland *et al.* 1995). Mitigation requirements are also not strictly enforced. Mitigation is rarely effective in preserving biodiversity (Cabbage *et al.* 1993; Water Environment Federation 1993). Many species of amphibians, reptiles, and insects require both wetland and upland habitat to complete their life cycles, and wetland protection criteria do not protect the upland habitats these species need to survive (Dodd 1997).

The petition alleges that the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201 *et seq.*) does not adequately protect aquatic species due to increased demands for coal, lax enforcement of environmental laws, and deference to economic development over species' protection. Sedimentation from active mines is a primary contributor to the decline of mollusks due to water quality degradation, shell erosion, and reproductive failure (Anderson 1989; Houp 1993; Neves *et al.* 1993). Reclamation required under SMCRA is not rigorously enforced (Ward 2009), and even when reclamation is conducted, it has not resulted in the restoration of pre-mining hydrologic characteristics or ecological functions (Townsend *et al.* 2009).

The petition alleges that management of National Wildlife Refuges, National Recreation Areas, National Forests, and Wild and Scenic Rivers fails to adequately protect the petitioned species for a variety of reasons, including lack of fiscal resources, threats from climate change, invasive species, recreation, poaching, and conflicting resource mandates (such as timber production and recreation).

Inadequacy of Existing State Regulatory Mechanisms

According to the petition, some of the petitioned species are listed as endangered or threatened by State fish, wildlife, and game departments, but State endangered and threatened species designations generally do not provide species with meaningful regulatory protections or with any habitat protection. Many of the species petitioned are classified as Species of Conservation Priority or Species of Greatest Conservation Need under State Wildlife Action Plans or Wildlife Conservation Strategies. These documents provide a framework for conservation, but are not regulatory documents and do not contain mandatory or enforceable provisions to protect species or their habitats. Further, the implementation of conservation strategies is dependent on the cooperation of resource managers and stakeholders, making their implementation and effectiveness uncertain.

State conservation priorities and initiatives are also sharply limited by funding, with charismatic and game species generally receiving the majority of resources, and the focus generally

being on vertebrates, which makes these priorities and initiatives inadequate to protect imperiled invertebrate species. Additionally, some States have regulations to protect some wildlife from direct take, but these regulations are not comprehensive, are generally poorly enforced, and are not adequate to protect wildlife from other threats (FWS 1997).

Other Regulatory Mechanisms and Protections

According to the petition, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) conveys some degree of protection to a few of the petitioned species listed under it, but it is inadequate to ensure their continued survival. For example, highly sought-after species such as rare map turtles are threatened by the international pet trade despite being protected under CITES (NatureServe 2008). Likewise, habitat preserves alone are insufficient to protect imperiled species. While habitat protection is an essential component of species' preservation, threats from a host of other factors, including climate change, poaching, pollution, and genetic isolation due to lack of habitat connectivity, influence habitat conditions and the success of the preservation efforts.

Land Ownership Patterns

The majority of land in the Southeast is privately owned. Private land use is either not regulated or only loosely regulated throughout much of the region (Buckner *et al.* 2002). According to the petition, most southeastern forests are in private ownership, and forestry best management practices to control erosion and protect aquatic resources are not mandated or voluntarily followed in the majority of southeastern forests. In addition, extensive clearcutting and poor logging practices threaten aquatic resources due to sedimentation, landslides, and degraded water quality (Buckner *et al.* 2002).

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition states that other natural or manmade factors, including pollution, global climate change, drought, invasive species, and synergies between multiple threats, threatened 13 of 15 amphibians, 1 amphipod (tidewater amphipod), 1 beetle (Avernus cave beetle), 3 birds (MacGillivray's seaside sparrow, Florida sandhill crane, and black rail), 4 butterflies (Linda's roadside-skipper, Duke's skipper, Palatka skipper, and rare skipper), 2 caddisflies (Morse's little plain brown sedge and setose cream and brown mottled microcaddisfly), 43 of 83 crayfish, 3 dragonflies (Cherokee clubtail, Septima's clubtail, Appalachian snaketail), 43 of 47 fish, 3 mammals (Pine Island oryzomys or marsh rice rat, Sanibel Island oryzomys or marsh rice rat, insular cotton rat), 1 moth (Louisiana eyed silkmoth), 35 of 48 mussels, 3 non-vascular plants (*Fissidens appalachensis* (Appalachian fissidens moss), *Fissidens hallii* (Hall's pocket moss), and *Phaeophyscia leana* (Lea's bog lichen)), 9 reptiles (Kirtland's snake, western chicken turtle, Florida Keys mole skink, Escambia map turtle, Pascagoula map turtle, black-knobbed map turtle, Alabama map turtle, striped mud turtle, northern red-bellied cooter), 27 of 44 snails, 1 stonefly (Smokies needlefly), and 31 of 76 vascular plants.

Pollution

According to the petition, pollution threatens two-thirds of the petitioned species, including 81 percent of the wildlife. Southeastern waterways are degraded by point and non-point source pollution from a variety of sources including agriculture, forestry, urban and suburban development, coal mining, and coal combustion wastes. Non-point source pollution, or runoff, is difficult to document, but its impact on aquatic species is both pervasive and persistent (Schuster 1997). Non-point source pollution is the most common factor adversely impacting the nation's fish communities, with more than 80 percent of fish negatively affected (Judy *et al.* 1982). Both non-point and point source pollution are pushing southeastern aquatic species towards extinction by carrying sediments, contaminants, nutrients, and other pollutants into waterways.

Sedimentation, Contamination, and Nutrient Loading

The petition alleges sedimentation is one of the primary causes of habitat degradation in southeastern waterways (Neves *et al.* 1997). Sedimentation and siltation result from a variety of activities including agriculture, forestry, development, and mining, with silt reaching the waterways during both ground-disturbing activities and storm events (FWS 2000). Suspended sediments threaten the entire aquatic community, from fish to invertebrates to birds.

In the Southeast, sedimentation is responsible for nearly 40 percent of fish imperilment problems (Etnier 1997). It both directly and indirectly adversely affects fish. Suspended sediments cut and clog gills and interfere with respiration. Sedimentation blocks light penetration, which interferes with feeding for species like minnows and darters, which feed by sight (Etnier and Starnes 1993). For species that feed by flipping over rocks and consuming the disturbed insects, sedimentation increases the embeddedness of rocks, making them more difficult to move and decreasing habitat suitability for aquatic invertebrate prey (Etnier and Starnes 1993). Sedimentation also interferes with feeding behavior for nocturnal feeders like catfish and imperiled madtoms, which catch aquatic insects by relying on the sensitivity of their barbells and on chemoreceptors, both of which are negatively affected by sedimentation (Todd 1973; Buckner *et al.* 2002). Benthic species require specific substrate conditions for spawning, feeding, and cover, all of which are degraded by sedimentation (Etnier and Starnes 1993; Warren *et al.* 1997). When sedimentation fills in the crevices between and beneath rocks, it decreases the availability of cover for resting and predator evasion (Herrig and Shute 2002). Madtoms, darters, suckers, and some minnows deposit their eggs on or near the substrate, and sedimentation interferes with their reproduction both by decreasing habitat suitability and by directly smothering eggs. Benthic fishes are also negatively affected by toxins stored in sediments (Reice and Wohlenberg 1993). Ultimately, excessive sedimentation can eliminate fish species from an area by rendering their habitat unsuitable (FWS 2000).

Similarly, excessive sedimentation has strong, persistent, negative effects on freshwater invertebrates (Strayer 2006). Siltation is one of the primary factors implicated in the decline of freshwater mollusks (Williams *et al.* 1993). Suspended sediments have both direct and indirect negative effects on mollusks. Sedimentation clogs the gills of mollusks and can cause suffocation (FWS 2000). Sedimentation reduces feeding efficiency both by interfering with respiration of filter feeders and by coating algae, which snails scrape from rocks (FWS 2000). Decreased visibility due to sedimentation can interfere with mussel reproduction by making it difficult for host fishes to detect glochidia (Neves *et al.* 1997). Sedimentation also reduces substrate suitability (Herrig and Shute 2002).

The petition also alleges that aquatic insects are threatened by excessive sediment levels. Stoneflies (*Plecoptera*) and mayflies (*Ephemeroptera*) are intolerant of siltation and disappear from impacted streams (Morse *et al.* 1997). Increased siltation impacts the

ability of dragonflies and damselflies to survive (Morse *et al.* 1997). Caddisflies, which require spaces among rocks for shelter and stable surfaces for grazing, are also negatively impacted by siltation (Morse *et al.* 1997). Sedimentation and other pollutants from mountaintop-removal coal mining operations are extirpating aquatic macroinvertebrate communities. In some streams that drain mountaintop-removal operations, entire orders of *Plecoptera* and *Ephemeroptera* have been extirpated (Wood 2009). Sedimentation is also negatively impacting rare ground-water inhabiting species of isopods and amphipods (Herrig and Shute 2002).

According to the petition, in addition to sediments, contaminants such as heavy metals, pesticides, and persistent organic pollutants threaten aquatic species. In a nationwide assessment of streambed sediment contaminants, the EPA found that 43 percent of sediments are probably associated with harmful effects on aquatic life or human health, and that 6 to 10 percent of streambed sediment is sufficiently contaminated to cause significant lethality to benthic organisms (EPA 2004b). Southeastern rivers are laden with a variety of toxic chemicals, with the lower Mississippi River receiving contaminants from half the continent (Folkerts 1997). Contaminants have both lethal and sub-lethal negative effects on aquatic species and may interfere with immunity, growth, and reproduction (Colborn *et al.* 1993; Gibbons *et al.* 2000). Selenium contamination from surface coal mining is causing teratogenic (developmental malformations) deformities in larval fish (Palmer *et al.* 2010). The negative effects of many contaminants will persist for centuries (Folkerts 1997).

Aquatic species are threatened both by chronic low-level contaminant pollution and acute exposure from accidental spills. For example, in 2009, a wastewater spill from a coal mine on the West Virginia-Pennsylvania border killed all the fish, salamanders, and mussels in 35 miles of 38-mile-long Dunkard Creek (Hopey 2009). Endemic species are particularly at high risk from accidental spills. Because many aquatic species exist only in small, isolated populations, a single spill event could drive a species to extinction.

The petition alleges that contaminants threaten all taxa of aquatic species. Declines in many fish species are attributed to chronic, sub-lethal pollution, which causes reduced growth, reduced reproductive success, and increased risk of death from stress-related diseases (Moyle and Leidy 1992). Cave fishes and other species that are directly dependent on groundwater levels are disproportionately threatened by contaminants that become concentrated if there is a reduction in the volume of springflow (Herrig and Shute 2002). Chemoreception in blind cave fishes can be disrupted by contaminants from surface aquifer recharge areas (Herrig and Shute 2002). Chronic low-level exposure to contaminants may be preventing the recovery of imperiled species of mollusks (FWS 1997). Juvenile mussels are sensitive to heavy metals and other pollutants (Naimo 1995; Neves *et al.* 1997). Amphibians are particularly sensitive to contaminants as all life stages are sensitive to toxins (AmphibiaWeb 2009). Many substances can be toxic to amphibians including heavy metals, pesticides, phenols, fertilizers, road salt, mining waste, and chemicals in runoff (Dodd 1997). Changes in pH can adversely affect amphibian eggs and larvae, and can inhibit growth and feeding in adults (Dodd 1997). Amphibians are threatened by accidental and intentional pesticide treatments.

Contaminants negatively impact aquatic species at the level of individuals, populations, and species. Fish, turtles, and other aquatic animals assimilate pesticides, heavy metals, and other persistent pollutants into their tissues (Buhlman and Gibbons 1997; de Solla and Fernie 2004). Animals at higher levels of the food chain can accumulate considerable levels of toxins. Significant concentrations of numerous contaminants have been detected in southeastern freshwater turtles including pesticides such as: aldrin, chlordane, dichlorodiphenyltrichloroethane (DDT), dieldrin, endrin, mirex, nonachlor, and toxaphene; and metals such as: Aluminum, barium, cadmium, chromium, cobalt, copper, iron, lead, mercury, molybdenum, nickel, strontium, and zinc (Meyers-Schöne and Walton 1994). Contaminant exposure can disrupt normal endocrine functioning, threatening reproduction and survival (Colborn *et al.* 1993). Turtles exposed to polychlorinated biphenyls (PCBs) have exhibited sex reversal and abnormal gonadal development, and alligators exposed to various contaminants have shown altered testosterone levels and gonadal abnormalities (Guillette *et al.* 1994, 1995). Water snakes in wetlands that have been contaminated with coal ash exhibit altered metabolic activity (Hopkins *et al.* 1999). Endocrine disruption caused by contaminants can lead to demographic shifts in aquatic reptile populations (Gibbons *et al.* 2000). Bioaccumulation of contaminants has contributed to the decline of map turtles, musk turtles, snapping turtles, and pond turtles (Buhlmann and Gibbons 1997).

The petition alleges that nutrient loading also threatens southeastern aquatic species. Excessive nitrates and phosphates entering waterways from point and non-point sources can lead to algal blooms, eutrophication, and depleted dissolved oxygen, which can be lethal to aquatic organisms (Mallin and Cahoon 2003). Some algal blooms are toxic and can cause direct mortality. The toxic dinoflagellates (*Pfiesteria piscicida* and *P. shumwayae*) have bloomed downstream of CAFOs in the Neuse, New, and Pamlico River estuaries in North Carolina (Mallin and Cahoon 2003). Even at sub-lethal levels, nutrient loading threatens aquatic species via many mechanisms. For example, excessive phosphate levels, especially in combination with the herbicide atrazine, have been shown to increase nematode infections in amphibians, leading to amphibian deformities (Johnson and Sutherland 2003; Rohr *et al.* 2008).

Sources of Nutrients, Contaminants, Sediments, and Other Pollutants

The petition claims that agriculture, forestry, urban and industrial development, coal mining and processing, and coal combustion all contribute to nutrient loading, contaminants, sediments, and other pollutants that make their way into southeastern waterways. In the Southeast, agricultural fields are commonly plowed to the edge of rivers and streams, which results in erosion and stream bank collapse and deposits tons of soil into waterways annually. Agricultural runoff carries sediment, pesticides, fertilizers, animal wastes, pathogens, salts, and petroleum particles into waterways.

The petition claims that atrazine is the most commonly detected pesticide in U.S. waters and is pervasively found in surface waters of the southern States, with the chemical being detected in every watershed sampled (EPA 2007; Wu *et al.* 2009). According to the petition, concentrations of atrazine in various southeastern waterways exceed levels harmful to non-vascular plants and aquatic biota (U.S. EPA 2007; Wu *et al.* 2009). The toxic and endocrine-disrupting effects of atrazine are well established (Wu *et al.* 2009) and include detrimental reproductive effects.

According to the petition, animal holding lots and CAFOs produce animal wastes that may be discharged directly into streams applied to agricultural

fields, or stored in lagoons (Buckner *et al.* 2002). These wastes contain enormous amounts of nitrogen and phosphorus, and these nutrients enter the environment and contribute to the eutrophication of waterbodies via runoff, via volatilization of ammonia, or by percolating into groundwater (Mallin and Cahoon 2003). Extreme weather events, lax management, and lagoon ruptures have led to acute pollution events from CAFOs, which have resulted in fish kills and algal blooms (Mallin and Cahoon 2003). Decaying carcasses from these operations also produce a significant source of nutrient pollution. In addition to nutrient loading, CAFOs release pharmaceuticals (growth promoters and antibiotics) and hormones (estrogens and androgens) into aquatic habitats (Orlando *et al.* 2004). These have led to endocrine disruption in female turtles (Irwin *et al.* 2001), and disruption of the reproductive biology of fathead minnows (*Pimephales promelas*) (Orlando *et al.* 2004).

The petition asserts that wastewater from aquacultural facilities also contributes significant amounts of sediments, nutrients, pharmaceuticals, and pathogens to southeastern aquatic habitats (Tacon and Forster 2003). Catfish farms, trout farms, and shrimp and crayfish ponds all release nutrients to aquatic habitats when they are drained or flushed during large rain events (Tucker and Hargreaves 2003; Morse *et al.* 1997; Holdich 1993).

According to the petition, pollution from forestry and silviculture affects the Mobile Basin. Logging and effluent from pulp mills contribute sediments and herbicides to waterways, degrading habitat for aquatic organisms. Erosion from deforestation and poor forestry practices increases silt loading and makes stream bottoms unstable, both of which threaten mollusks and other aquatic organisms (Williams *et al.* 1993). Herbicides used to kill hardwoods and herbaceous vegetation may be harmful to amphibians and other species (Dodd 1997), and some herbicides are toxic to algae and interfere with aquatic ecology (Austin *et al.* 1991).

Urban and industrial development is also cited in the petition as contributing to pollution of southeastern aquatic habitats. Point source pollution from manufacturing sites, power plants, and sewage treatment plants is a major cause of aquatic habitat degradation (Morse *et al.* 1997). Non-point source pollution in the form of runoff from urban and industrial areas contributes sediment, contaminants, nutrients, and other pollutants that can be harmful to aquatic organisms and their habitats, including petroleum particles, highway salts, silt, fertilizers, pesticides, surfactants, and pet wastes (Neves *et al.* 1997; Buckner *et al.* 2002).

The petition states that coal mining and processing are a major source of pollution in West Virginia, Kentucky, Tennessee, Virginia, Alabama, and Georgia. Contaminants from coal mining and processing include sediments, metals, hydraulic fluids, frothing agents, modifying reagents, pH regulators, dispersing agents, flocculants, and media separators (Ahlstedt *et al.* 2005). Sediments, heavy metals, and other pollutants from mining are one of the causal factors in mussel declines (Houp 1993; Neves *et al.* 1997; Locke *et al.* 2006). Heavy metals, including aluminum, cadmium, copper, iron, manganese, mercury, selenium, sulfate, and zinc, are released into the environment and act as metabolic poisons in freshwater species (Earle and Callaghan 1998), and cause weight loss, altered enzyme activity and filtration rates, and behavioral modifications (Naimo 1995). The effects of metals on mussel feeding, growth, and reproduction can result in significant consequences for mussel populations, and Naimo (1995) concludes that the chronic, low-level exposure to toxic metals is partially responsible for the widespread decline in species diversity and population density of freshwater mussels. Selenium is particularly prevalent in coal effluents and is associated with deformities and reproductive failure in aquatic species (Lemly 2009; Pomponio 2009).

The petition also asserts that pollution, including sediments, metals, acids, and other substances, in drainage from abandoned mined lands negatively impacts aquatic species in a variety of ways from acute toxicity to physical impacts from solid precipitants (Cherry *et al.* 2001; Soucek *et al.* 2003). Surface waters receiving mine discharge commonly have extremely low pH levels, below 3.0, with toxic impacts extending several miles downstream (Soucek *et al.* 2003).

Coal combustion produces nitric and sulfuric acids, mercury, and coal ash, that all negatively impact aquatic species (Fleischer *et al.* 1993). Nitric and sulfuric acids released from coal-fired power plants cause acidification of water bodies. Streams and lakes in Great Smoky Mountains National Park and elsewhere have been degraded by acid precipitation (Morse *et al.* 1997). Phytoplankton is negatively affected by acidification, which has ramifications throughout the food web (Dodd 1997). Acid precipitation harms caddisflies and stoneflies (Morse *et al.* 1997). The petition claims that several of the petitioned insects, including the Smokies snowfly and Smokies needlefly, are threatened by acid deposition. Acidity in aquatic habitats can also result in direct amphibian mortality, and plays a major role in limiting amphibian distribution (Dodd 1997).

Coal combustion also releases mercury into the environment. Atmospheric deposition of mercury is responsible for the contamination of most waterways. In a U.S. Geological Survey study that examined mercury in fish, sediments, and water drawn from 291 rivers and streams, detectable mercury contamination was found in every single fish sampled (Scudder *et al.* 2009). The highest concentrations among all sampled sites occurred in fish from blackwater coastal-plain streams draining forested lands or wetlands in Louisiana, Georgia, Florida, and North and South Carolina, and from basins in the west with gold or mercury mines or both. Mercury levels in fish at over 70 percent of the sites exceeded the levels of concern for the protection of fish eating-mammals.

The combustion of coal produces over 129 million tons of solid waste, or coal ash, annually (Eilperin 2009). Coal ash contains concentrated levels of chlorine, zinc, copper, arsenic, lead, selenium, mercury, and other toxic contaminants, and improper storage of coal combustion waste has resulted in pollution of ground and surface waters (EPA 2007b). There are 44 coal ash ponds in Kentucky alone. Hopkins *et al.* (1999) reported behavioral, developmental, and metabolic abnormalities in amphibians and reptiles in wetlands that have been contaminated with coal combustion waste in South Carolina.

Global Climate Change and Drought

According to the petition, global climate change threatens all of the petitioned species. Climate models project both continued warming in all seasons across the Southeast, and an increase in the rate of warming (Karl *et al.* 2009). The warming in air and water temperatures will create stress for fish and wildlife. Increasing water temperatures and declining dissolved oxygen levels in streams, lakes, and shallow aquatic habitats will lead to fish kills and loss of aquatic species diversity (Folkerts 1997; Karl *et al.* 2009). Climate change will alter the distribution of native plants and animals and will lead to the local loss of imperiled species and the

displacement of native species by invasives (Karl *et al.* 2009).

Climate change will increase both the incidence and severity of droughts and major storm events in the Southeast (Karl *et al.* 2009). The percentage of the Southeast region experiencing moderate to severe drought has already increased over the past 3 decades (Karl *et al.* 2009). The threat to aquatic ecosystems posed by drought is magnified both by climate change and by human population growth. Decreased water availability coupled with human population growth will further stress natural systems. Drought, and increased evaporation and evapotranspiration due to warmer temperatures, will lead to decreased groundwater recharge and potential saltwater intrusion in shallow aquifers in many parts of the Southeast, further exacerbating threats to aquatic organisms (Karl *et al.* 2009).

Intense drought and increasing temperatures resulting from climate change will cause the drying of water bodies and the local or global extinction of riparian and aquatic species (Karl *et al.* 2009). Declines of mollusks as a direct result of drought have already been documented (Golladay *et al.* 2004; Haag and Warren 2008). Populations of amphibians dependent on consistent rainfall patterns for breeding, such as those that breed in temporary ponds, could be extirpated by drought (Dodd 1997). Amphibian declines are already linked to climate change globally (Pounds *et al.* 2006) and in the southeastern United States (Daszak *et al.* 2005).

The warming climate will likely cause ecological zones to shift upward in latitude and altitude, and species' persistence will depend upon, among other factors, their ability to disperse to suitable habitat (Peters and Darling 1985). Human modifications to waterways, such as dams, and changes to the landscape, including extensive development, will make dispersal of species to more suitable habitat difficult to impossible (Strayer 2006; Buhlman and Gibbons 1997; FWS 2009). Many species of freshwater invertebrates are likely to go extinct due to climate change (Strayer 2006). Freshwater mussels and snails are capable of moving only short distances and are unlikely to be able to adjust their ranges in response to climatic shifts (FWS 2009). The petitioners allege that deteriorating habitat conditions and obstacles to dispersal place all of the petitioned species at risk of extinction due to global climate change.

According to the petition, several of the coastal petitioned species are threatened by sea level rise and increased storm intensity resulting from global climate change, including the Florida Keys mole skink, MacGillivray's seaside sparrow, and Louisiana eyed silkmoth.

Invasive Species

The petition alleges that invasive species are a major threat to native aquatic plants and animals in the Southeast, and a known threat for 96 of the petitioned species. Invasive species negatively affect native species through competition, predation, and disease introduction. Introduced Asian carp, which are used to control trematodes in catfish ponds, have become established in rivers throughout the Mississippi Basin, where they consume native mollusks and compete for resources with native fishes (Naylor *et al.* 2001). There are at least 30 species of invasive fish in the Tennessee and Cumberland River basins, including carp, alewife, rainbow and brown trout, striped bass, yellow perch, nonnative forms of muskellunge, and walleye (Etnier 1997). Nonnative mosquitofish (*Gambusia holbrooki*) have been widely introduced for vector control and now compete with native species for resources (Buckner *et al.* 2002). Game fish, such as trout and bass, have been widely introduced and prey on native fish, invertebrates, and amphibians (Herrig and Shute 2002; Kats and Ferrer 2003; Strayer 2006). Native fish fauna in southern Florida have been displaced by tropical species, and more than 60 indigenous southeastern fish species have been introduced to drainages where they are not native (Warren Jr. *et al.* 1997).

According to the petition, freshwater mollusks are threatened both by invasive fish and invasive mollusks. The introduction of nonnative fishes such as the round goby has indirect negative effects on native mussels due to negative impacts on their host fishes (NatureServe 2009). The invasion of nonindigenous mollusks is one of the primary reasons for the decline of freshwater mussels (Williams *et al.* 1993). Invasive mussels can reach densities of thousands per square meter, outcompeting and literally covering native species (Williams *et al.* 1993).

The zebra mussel has been detected in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Tennessee, Virginia, and West Virginia (NatureServe 2009). Zebra mussels infest most major Mississippi River tributaries, including the Ohio, Tennessee, Cumberland, and Arkansas Rivers (NatureServe 2009), and are expected to spread to all the navigable rivers in the Southeast, as well as tributary reservoirs and smaller streams (Jenkinson and Todd 1997). Zebra mussels and other invasive mollusks compete with native mussels for food and space, attach to native mussels and weaken or kill them, and alter the suitability of the substrate for native species (Herrig and Shute 2002). Where zebra mussels establish large populations, they are likely to destroy native mussels and snail populations (Jenkinson and Todd 1997).

The petition alleges that native southeastern mollusks are also threatened by the invasion of the Asian clam. Asian clams spread rapidly throughout every major drainage in the South following their introduction in the 1960s. Asian clams compete with native mussels for space and food.

The petition asserts that other southeastern taxa, in addition to fish and mollusks, are also threatened by the spread of invasive species. Native crayfish are threatened by invasive mussels, which can attach to their exoskeletons, and by invasive species of crayfish and fish, which compete with and prey on native crayfish (Schuster 1997). Nonnative crayfish are commonly introduced via ''bait buckets.'' Several species of nonnative snails have also invaded the Southeast (Neves *et al.* 1993). Native amphibians are threatened by invasive fish and invasive amphibians, which can act as predators, competitors, and disease vectors (Dodd 1997). Additionally, the petition asserts that exotic cattle egrets, armadillos, and wild hogs can ''exact a substantial toll'' on amphibians (Dodd 1997). Fire ants also threaten amphibians, as they have been known to kill metamorphosing individuals (Freed and Neitman 1988).

According to the petition, many invasive plant species are wreaking havoc on aquatic habitats in the Southeast. Species such as *Myriophyllum spicatum* (Eurasian watermilfoil), *Alternanthera philoxeroides* (alligatorweed), *Hydrilla verticillata* (hydrilla), and *Eichhornia crassipies* (water hyacinth) are thriving in aquatic and wetland habitats and negatively impacting native species (Folkerts 1997; Buckner *et al.* 2002). Invasive plants displace native plants, alter substrate availability for aquatic invertebrates, and interfere with the food web (Folkerts 1997). Invasive plants threaten several of the petitioned plants, including *Baptisia megacarpa* (Apalachicola wild indigo), *Ptilimnium ahlesii* (Carolina bishopweed), and *Hexastylis speciosa* (Harper's heartleaf).

Outbreaks of invasive and native forest-destroying insects have weakened and killed trees in riparian areas and reduced nutrient inputs to aquatic

systems (Morse *et al.* 1997). The petitioned *Tsuga caroliniana* (Carolina hemlock) is threatened by hemlock woolly adelgid (*Adelges tsugae*). Streamside habitat degradation due to exotic pests also threatens aquatic insect populations in the Southeast due to altered microhabitat conditions (Herrig and Shute 2002).

Inherent Vulnerability of Small, Isolated Populations

According to the petition, 224 of the petitioned species now exist in primarily small, isolated populations, which heightens their risk of extinction. Small, isolated populations are vulnerable to extirpation due to limited gene flow, reduced genetic diversity, and inbreeding depression (Lynch 1996). Population isolation also increases the risk of extinction from stochastic genetic and environmental events, including drought, flooding, and toxic spills (FWS 2009). Habitat modification and cumulative habitat degradation from non-point source pollution are also major threats for species that exist in isolated populations. Due to blocked avenues of dispersal or limited dispersal ability, isolated populations gradually disappear as habitat conditions deteriorate (FWS 2000).

Synergies and Multiple Causes

The petition alleges that the risk of extinction for the petitioned species is heightened by synergies between threats as most species face multiple threats and these threats interact and magnify each other. Across taxa, interactions among threats place southeastern aquatic biota at increased risk of extinction. Reptiles are threatened by habitat loss and degradation, invasive species, pollution, disease and parasitism, unsustainable use, global climate change, and synergies between these factors (Gibbons *et al.* 2000). Freshwater snails are threatened by the combined effects of habitat loss, pollution, drought, and invasive species (Lydeard *et al.* 2004). Likewise, amphibians are imperiled by multiple, interacting threats. Stress from the effects of increased UV-b radiation, pollution, and climate change has made amphibians more vulnerable to the spread of disease (Gendron *et al.* 2003; Pounds *et al.* 2006). The interaction between climate change and compromised immunity due to various stressors threatens both amphibian populations and entire species (Green and Dodd 2003). Similarly, threats to freshwater fish are ''many, cumulative and interactive,'' and fish extirpation is nearly always attributable to multiple human impacts (Warren *et al.* 1997). Any factor that causes the decline of the host fishes on which mussels depend for reproduction also threatens the mussels, which themselves face multiple threats including impoundment, pollution, and invasive species (Neves *et al.* 1997). The petition claims that because of the multifaceted ecological relationships among species, the extirpation of a species can have effects that cascade throughout the community, highlighting the need to protect entire communities simultaneously.

Summary of Threats as Identified in the Petition

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Ambystoma barbouri	Streamside Salamander	Amphibian	X	X	X	X	X
Amphiuma pholeter	One-Toed Amphiuma	Amphibian	X	X	X	X	X
Cryptobranchus alleganiensis	Hellbender	Amphibian	X	X	X	X	X
Desmognathus abditus	Cumberland Dusky Salamander	Amphibian	X	X	X	X	
Desmognathus aeneus	Seepage Salamander	Amphibian	X	X	X	X	X
Eurycea chamberlaini	Chamberlain's Dwarf Salamander	Amphibian	X	X	X	X	X
Eurycea tynerensis	Oklahoma Salamander	Amphibian	X	X	X	X	X
Gyrinophilus palleucus	Tennessee Cave Salamander	Amphibian	X	X	X	X	X
Gyrinophilus subterraneus	West Virginia Spring Salamander	Amphibian	X	X	X	X	X
Eurycea wallacei	Georgia Blind Salamander	Amphibian	X	X	X	X	X
Necturus lewisi	Neuse River Waterdog (salamander).	Amphibian	X	X	X	X	X
Pseudobranchus striatus lustricolus.	Gulf Hammock Dwarf Siren	Amphibian	X	X		X	X
Urspelerpes brucei	Patch-nosed Salamander	Amphibian	X	X		X	X
Crangonyx grandimanus	Florida Cave Amphipod	Amphipod	X			X	
Crangonyx hobbsi	Hobb's Cave Amphipod	Amphipod	X			X	
Stygobromus cooperi	Cooper's Cave Amphipod	Amphipod	X			X	
Stygobromus indentatus	Tidewater Amphipod	Amphipod	X			X	X
Stygobromus morrisoni	Morrison's Cave Amphipod	Amphipod	X			X	
Stygobromus parvus	Minute Cave Amphipod	Amphipod	X			X	
Cicindela marginipennis	Cobblestone Tiger Beetle	Beetle	X	X		X	
Pseudanophthalmus avernus	Avernus Cave Beetle	Beetle	X			X	X
Pseudanophthalmus cordicollis	Little Kennedy Cave Beetle	Beetle	X			X	
Pseudanophthalmus egberti	New River Valley Cave Beetle	Beetle	X			X	
Pseudanophthalmus hirsutus	Cumberland Gap Cave Beetle	Beetle	X			X	
Pseudanophthalmus hubbardi	Hubbard's Cave Beetle	Beetle	X			X	
Pseudanophthalmus hubrichti	Hubricht's Cave Beetle	Beetle	X			X	
Pseudanophthalmus intersectus	Crossroad's Cave Beetle	Beetle	X			X	
Pseudanophthalmus limicola	Madden's Cave Beetle	Beetle	X			X	
Pseudanophthalmus montanus	Dry Fork Valley Cave Beetle	Beetle	X			X	
Pseudanophthalmus pontis	Natural Bridge Cave Beetle	Beetle	X			X	
Pseudanophthalmus potomaca	South Branch Valley Cave Beetle	Beetle	X			X	
Pseudanophthalmus praetermissus.	Overlooked Cave Beetle	Beetle	X			X	
Pseudanophthalmus sanctipauli	Saint Paul Cave Beetle	Beetle	X			X	
Pseudanophthalmus sericus	Silken Cave Beetle	Beetle	X			X	

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS—Continued

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Pseudanophthalmus thomasi	Thomas's Cave Beetle	Beetle	X			X	
Pseudanophthalmus virginicus	Maiden Spring Cave Beetle	Beetle	X			X	
Ammodrammus maritimus macgillivraii.	MacGillivray's Seaside Sparrow	Bird	X		X	X	X
Grus canadensis pratensis	Florida Sandhill Crane	Bird	X	X	X	X	X
Laterallus jamaicensis	Black Rail	Bird	X	X	X	X	X
Amblyscirtes linda	Linda's Roadside-skipper	Butterfly	X				X
Euphyes dukesi calhouni	Duke's Skipper	Butterfly	X			X	X
Euphyes pilatka klotsi	Palatka Skipper	Butterfly	X			X	X
Problema bulenta	Rare Skipper	Butterfly	X	X		X	X
Agarodes logani	Logan's Agarodes Caddisfly	Caddisfly	X			X	
Hydroptila sykorae	Sykora's Hydroptila Caddisfly	Caddisfly	X			X	
Lepidostoma morsei	Morse's Little Plain Brown Sedge	Caddisfly	X			X	X
Oecetis parva	Little Oecetis Longhorn Caddisfly	Caddisfly	X			X	
Oxyethira setosa	Setose Cream and Brown Mottled Microcaddisfly.	Caddisfly	X			X	X
Triaenodes tridontus	Three-toothed Triaenodes Caddisfly.	Caddisfly	X			X	
Bouchardina robisoni	Bayou Bodcau Crayfish	Crayfish	X			X	
Cambarus cryptodytes	Dougherty Plain Cave Crayfish	Crayfish	X			X	
Cambarus obeyensis	Obey Crayfish	Crayfish	X			X	X
Cambarellus blacki	Cypress Crayfish	Crayfish	X			X	
Cambarellus diminutus	Least Crayfish	Crayfish	X				X
Cambarellus lesliei	Angular Dwarf Crayfish	Crayfish	X			X	
Cambarus bouchardi	Big South Fork Crayfish	Crayfish	X			X	X
Cambarus chasmodactylus	New River Crayfish	Crayfish	X			X	
Cambarus chaugaensis	Chauga Crayfish	Crayfish	X			X	X
Cambarus coosawattae	Coosawattae Crayfish	Crayfish	X			X	X
Cambarus cracens	Slenderclaw Crayfish	Crayfish	X			X	
Cambarus cymatilis	Conasauga Blue Burrower	Crayfish	X			X	
Cambarus eeseeohensis	Grandfather Mountain Crayfish	Crayfish	X			X	X
Cambarus elkensis	Elk River Crayfish	Crayfish	X			X	X
Cambarus extraneus	Chickamauga Crayfish	Crayfish	X			X	X
Cambarus fasciatus	Etowah Crayfish	Crayfish	X			X	X
Cambarus georgiae	Little Tennessee Crayfish	Crayfish	X			X	X
Cambarus harti	Piedmont Blue Burrower	Crayfish	X			X	X
Cambarus jezerinaci	Spiny Scale Crayfish	Crayfish	X			X	
Cambarus jonesi	Alabama Cave Crayfish	Crayfish	X			X	X
Cambarus nerterius	Greenbrier Cave Crayfish	Crayfish	X			X	X
Cambarus parrishi	Hiwassee Headwater Crayfish	Crayfish	X			X	X
Cambarus pristinus	Pristine Crayfish	Crayfish	X			X	
Cambarus scotti	Chattooga River Crayfish	Crayfish	X			X	X
Cambarus speciosus	Beautiful Crayfish	Crayfish	X			X	X
Cambarus spicatus	Broad River Spiny Crayfish	Crayfish	X				X
Cambarus strigosus	Lean Crayfish	Crayfish	X			X	
Cambarus unestami	Blackbarred Crayfish	Crayfish	X			X	X
Cambarus veteranus	Big Sandy Crayfish	Crayfish	X			X	
Cambarus williami	Brawleys Fork Crayfish	Crayfish	X			X	
Distocambarus carlsoni	Mimic Crayfish	Crayfish	X			X	X
Distocambarus devexus	Broad River Burrowing Crayfish	Crayfish	X			X	
Distocambarus youngineri	Newberry Burrowing Crayfish	Crayfish	X			X	
Fallicambarus burrisi	Burrowing Bog Crayfish	Crayfish	X			X	
Fallicambarus danielae	Speckled Burrowing Crayfish	Crayfish	X			X	X
Fallicambarus gilpini	Jefferson County Crayfish	Crayfish	X			X	X
Fallicambarus harpi	Ouachita Burrowing Crayfish	Crayfish	X			X	X
Fallicambarus hortoni	Hatchie Burrowing Crayfish	Crayfish	X			X	X
Fallicambarus petilicarpus	Slenderwrist Burrowing Crayfish	Crayfish	X			X	X
Fallicambarus strawni	Saline Burrowing Crayfish	Crayfish	X			X	X
Hobbseus cristatus	Crested Riverlet Crayfish	Crayfish	X			X	
Hobbseus orconectoides	Oktibbeha Riverlet Crayfish	Crayfish	X			X	
Hobbseus petilus	Tombigbee Riverlet Crayfish	Crayfish	X			X	
Hobbseus yalobushensis	Yalobusha Riverlet Crayfish	Crayfish	X			X	
Orconectes blacki	Calcasieu Crayfish	Crayfish	X			X	
Orconectes eupunctus	Coldwater Crayfish	Crayfish	X			X	X
Orconectes hartfieldi	Yazoo Crayfish	Crayfish	X			X	
Orconectes incomptus	Tennessee Cave Crayfish	Crayfish	X			X	
Orconectes jonesi	Sucarnoochee River Crayfish	Crayfish	X			X	X
Orconectes maletae	Kisatchie Painted Crayfish	Crayfish	X			X	
Orconectes marchandi	Mammoth Spring Crayfish	Crayfish	X			X	X
Orconectes packardi	Appalachian Cave Crayfish	Crayfish	X			X	

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS—Continued

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Orconectes sheltae	Shelta Cave Crayfish	Crayfish	X			X	X
Orconectes virginiensis	Chowanoke Crayfish	Crayfish	X				X
Orconectes wrighti	Hardin Crayfish	Crayfish	X			X	
Procambarus acherontis	Orlando Cave Crayfish	Crayfish	X			X	
Procambarus apalachicolae	Coastal Flatwoods Crayfish	Crayfish	X			X	
Procambarus attiguus	Silver Glen Springs Crayfish	Crayfish	X			X	X
Procambarus barbiger	Jackson Prairie Crayfish	Crayfish	X			X	X
Procambarus cometes	Mississippi Flatwoods Crayfish	Crayfish	X			X	X
Procambarus delicatus	Bigcheek Cave Crayfish	Crayfish	X			X	
Procambarus econfinae	Panama City Crayfish	Crayfish	X			X	X
Procambarus erythrops	Santa Fe Cave Crayfish	Crayfish	X			X	
Procambarus fitzpatricki	Spinytail Crayfish	Crayfish	X			X	
Procambarus franzi	Orange Lake Cave Crayfish	Crayfish	X			X	X
Procambarus horsti	Big Blue Springs Cave Crayfish	Crayfish	X	X		X	
Procambarus lagniappe	Lagniappe Crayfish	Crayfish	X			X	X
Procambarus leitheuseri	Coastal Lowland Cave Crayfish	Crayfish	X			X	
Procambarus lucifugus	Florida Cave Crayfish	Crayfish	X			X	X
Procambarus lucifugus alachua	Alachua Light Fleeing Cave Crayfish.	Crayfish	X			X	X
Procambarus lucifugus lucifugus	Florida Cave Crayfish	Crayfish	X			X	X
Procambarus lylei	Shutispear Crayfish	Crayfish	X			X	
Procambarus milleri	Miami Cave Crayfish	Crayfish	X			X	
Procambarus morrisi	Putnam County Cave Crayfish	Crayfish	X			X	
Procambarus orcinus	Woodville Karst Cave Crayfish	Crayfish	X			X	
Procambarus pallidus	Pallid Cave Crayfish	Crayfish	X			X	X
Procambarus pictus	Black Creek Crayfish	Crayfish	X			X	
Procambarus pogum	Bearded Red Crayfish	Crayfish	X			X	
Procambarus regalis	Regal Burrowing Crayfish	Crayfish	X			X	
Procambarus reimeri	Irons Fork Burrowing Crayfish	Crayfish	X			X	X
Troglocambarus maclanei	Spider Cave Crayfish	Crayfish	X			X	
Cordulegaster sayi	Say's Spiketail	Dragonfly	X			X	
Gomphus consanguis	Cherokee Clubtail	Dragonfly	X			X	X
Gomphus sandrius	Tennessee Clubtail	Dragonfly	X			X	
Gomphus septima	Septima's Clubtail	Dragonfly	X	X		X	X
Gomphus westfalli	Westfall's Clubtail	Dragonfly	X			X	
Libellula jesseana	Purple Skimmer	Dragonfly	X			X	
Macromia margarita	Mountain River Cruiser	Dragonfly	X			X	
Ophiogomphus australis	Southern Snaketail	Dragonfly	X			X	
Ophiogomphus edmundo	Edmund's Snaketail	Dragonfly	X			X	
Ophiogomphus incurvatus	Appalachian Snaketail	Dragonfly	X	X		X	X
Somatochlora calverti	Calvert's Emerald	Dragonfly	X			X	
Somatochlora margarita	Texas Emerald	Dragonfly	X			X	
Somatochlora ozarkensis	Ozark Emerald	Dragonfly	X			X	
Stylurus potulentus	Yellow-sided Clubtail	Dragonfly	X			X	
Amblyopsis spelaea	Northern cavefish	Fish	X	X		X	X
Cyprinella callitaenia	Bluestripe shiner	Fish	X			X	X
Cyprinella xaenura	Altamaha Shiner	Fish	X			X	X
Elassoma boehlkei	Carolina Pygmy Sunfish	Fish	X	X	X	X	X
Erimystax harryi	Ozark chub	Fish	X			X	X
Etheostoma bellator	Warrior Darter	Fish	X			X	X
Etheostoma brevirostrum	Holiday Darter	Fish	X			X	X
Etheostoma cinereum	Ashy Darter	Fish	X			X	X
Etheostoma forbesi	Barrens Darter	Fish	X			X	X
Etheostoma microlepidum	Smallscale Darter	Fish	X			X	
Etheostoma osburni	Candy Darter	Fish	X		X	X	X
Etheostoma pallididorsum	Paleback Darter	Fish	X		X	X	X
Etheostoma pseudovulatum	Egg-mimic Darter	Fish	X			X	X
Etheostoma striatulum	Striated Darter	Fish	X			X	X
Etheostoma tecumsehi	Shawnee Darter	Fish	X		X	X	X
Etheostoma tippecanoe	Tippecanoe Darter	Fish	X			X	X
Etheostoma trisella	Trispot Darter	Fish	X			X	X
Etheostoma tuscumbia	Tuscumbia Darter	Fish	X			X	X
Fundulus julisia	Barrens Topminnow	Fish	X		X	X	
Moxostoma robustum	Robust Redhorse	Fish	X	X	X	X	X
Notropis ariommus	Popeye Shiner	Fish	X			X	
Notropis ozarcanus	Ozark Shiner	Fish	X			X	X
Notropis perpallidus	Peppered Shiner	Fish	X			X	X
Notropis suttkusi	Rocky Shiner	Fish	X			X	X
Noturus fasciatus	Saddled Madtom	Fish	X			X	X
Noturus furiosus	Carolina Madtom	Fish	X		X	X	X

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS—Continued

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Noturus gilberti	Orangefin Madtom	Fish	X	X		X	X
Noturus gladiator	Piebald Madtom	Fish	X			X	X
Noturus lachneri	Ouachita Madtom	Fish	X			X	X
Noturus munitus	Frecklebelly Madtom	Fish	X			X	X
Noturus taylori	Caddo Madtom	Fish	X			X	X
Percina bimaculata	Chesapeake Logperch	Fish	X			X	X
Percina brevicauda	Coal Darter	Fish	X			X	X
Percina crypta	Halloween Darter	Fish	X			X	
Percina cymatotaenia	Bluestripe Darter	Fish	X			X	X
Percina kusha	Bridled Darter	Fish	X			X	X
Percina macrocephala	Longhead Darter	Fish	X			X	X
Percina nasuta	Longnose Darter	Fish	X			X	X
Percina sipsi	Bankhead Darter	Fish	X			X	X
Percina williamsi	Sickle Darter	Fish	X			X	X
Pteronotropis euryzonus	Broadstripe Shiner	Fish	X			X	X
Pteronotropis hubbsi	Bluehead Shiner	Fish	X	X	X	X	X
Thoburnia atripinnis	Blackfin Sucker	Fish	X			X	X
Remenus kirchneri	Blueridge Springfly	Fly	X			X	
Caecidotea cannula	None	Isopod	X			X	
Lirceus culveri	Rye Cove Isopod	Isopod	X			X	
Blarina carolinensis shermani	Sherman's Short-tailed Shrew	Mammal	X		X	X	
Oryzomys palustris pop. 1	Pine Island Oryzomys or Marsh Rice Rat.	Mammal	X			X	X
Oryzomys palustris pop.2	Sanibel Island Oryzomys or Marsh Rice Rat.	Mammal	X			X	X
Sigmodon hispidus insulicola	Insular Cotton Rat	Mammal	X			X	X
Automeris louisiana	Louisiana Eyed Silkmoth	Moth	X			X	X
Alasmidonta arcula	Altamaha Arcmussel	Mussel	X			X	X
Alasmidonta triangulata	Southern Elktoe	Mussel	X			X	X
Alasmidonta varicosa	Brook Floater	Mussel	X	X		X	X
Anodonta heardi	Apalachicola Floater	Mussel	X			X	X
Anodontoides radiatus	Rayed Creekshell	Mussel	X			X	X
Cyprogenia aberti	Western Fanshell	Mussel	X			X	X
Elliptio ahenea	Southern Lance	Mussel	X			X	X
Elliptio arca	Alabama Spike	Mussel	X			X	X
Elliptio arctata	Delicate Spike	Mussel	X			X	X
Elliptio fraterna	Brother Spike	Mussel	X	X		X	X
Elliptio lanceolata	Yellow Lance	Mussel	X			X	X
Elliptio monroensis	St. John's Elephant Ear	Mussel	X			X	X
Elliptio purpurella	Inflated Spike	Mussel	X			X	X
Fusconaia masoni	Atlantic Pigtoe	Mussel	X			X	X
Fusconaia subrotunda	Longsolid	Mussel	X			X	X
Lampsilis fullerkati	Waccamaw Fatmucket	Mussel	X			X	X
Lasmigona holstonia	Tennessee Heelsplitter	Mussel	X		X	X	X
Lasmigona subviridis	Green Floater	Mussel	X			X	X
Medionidus conradicus	Cumberland Moccasinshell	Mussel	X		X	X	X
Medionidus walkeri	Suwannee Moccasinshell	Mussel	X	X		X	X
Obovaria subrotunda	Round Hickorynut	Mussel	X			X	X
Obovaria unicolor	Alabama Hickorynut	Mussel	X			X	X
Pleurobema athearni	Canoe Creek Pigtoe	Mussel	X			X	X
Pleurobema oviforme	Tennessee Clubshell	Mussel	X	X	X	X	X
Pleurobema rubellum	Warrior Pigtoe	Mussel	X	X		X	X
Pleurobema rubrum	Pyramid Pigtoe	Mussel	X	X		X	X
Pleuronaia barnesiana	Tennessee Pigtoe	Mussel	X		X	X	X
Pyganodon gibbosa	Inflated Floater	Mussel	X			X	X
Quadrula asperata archeri	Tallapoosa Orb	Mussel	X				
Simpsonaias ambigua	Salamander Mussel	Mussel	X			X	X
Toxolasma lividus	Purple Lilliput	Mussel	X		X	X	X
Toxolasma pullus	Savannah Lilliput	Mussel	X		X	X	X
Villosa nebulosa	Alabama Rainbow	Mussel	X			X	X
Villosa ortmanni	Kentucky Creekshell	Mussel	X			X	
Villosa umbrans	Coosa Creekshell	Mussel	X			X	X
Fissidens appalachensis	Appalachian Fissidens Moss	Non-Vascular Plant	X			X	X
Fissidens hallii	Hall's Pocket Moss	Non-Vascular Plant	X			X	X
Megaceros aenigmaticus	Hornwort	Non-Vascular Plant	X			X	
Phaeophyscia leana	Lea's Bog Lichen	Non-Vascular Plant	X			X	X
Plagiochila caduciloba	Gorge Leafy Liverwort	Non-Vascular Plant	X			X	
Plagiochila sharpii ssp. *sharpii*	Sharp's Leafy Liverwort	Non-Vascular Plant	X			X	
Clonophis kirtlandii	Kirtland's Snake	Reptile	X	X	X	X	X
Deirochelys reticularia miaria	Western Chicken Turtle	Reptile	X	X		X	X

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS—Continued

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Eumeces egregius egregius	Florida Keys Mole Skink	Reptile	X	X		X	X
Graptemys barbouri	Barbour's Map Turtle	Reptile	X	X	X	X	
Graptemys ernsti	Escambia Map Turtle	Reptile	X	X	X	X	X
Graptemys gibbonsi	Pascagoula Map Turtle	Reptile	X	X	X	X	X
Graptemys nigrinoda	Black-knobbed Map Turtle	Reptile	X	X		X	X
Graptemys pulchra	Alabama Map Turtle	Reptile	X	X		X	X
Kinosternon baurii pop. 1	Striped Mud Turtle—Lower FL Keys.	Reptile	X	X		X	X
Pseudemys nelsoni pop. 1	Florida Red-bellied Turtle—FL Panhandle.	Reptile	X	X	X	X	
Pseudemys rubriventris	Northern Red-bellied Cooter	Reptile	X	X	X	X	X
Thamnophis sauritus pop.1	Eastern Ribbonsnake—Lower FL Keys.	Reptile	X			X	
Antrorbis breweri	Manitou Cavesnail	Snail	X			X	X
Aphaostracon asthenes	Blue Spring Hydrobe Snail	Snail	X			X	X
Aphaostracon chalarogyrus	Freemouth Hydrobe Snail	Snail	X			X	
Aphaostracon monas	Wekiwa Hydrobe Snail	Snail	X			X	
Aphaostracon pycnus	Dense Hydrobe Snail	Snail	X			X	X
Aphaostracon theiocrenetum	Clifton Spring Hydrobe Snail	Snail	X			X	X
Elimia acuta	Acute Elimia	Snail	X			X	X
Elimia alabamensis	Mud Elimia	Snail	X			X	X
Elimia ampla	Ample Elimia	Snail	X			X	X
Elimia annettae	Lilyshoals Elimia	Snail	X			X	X
Elimia arachnoidea	Spider Elimia	Snail	X			X	X
Elimia bellacrenata	Princess Elimia	Snail	X			X	X
Elimia bellula	Walnut Elimia	Snail	X			X	
Elimia chiltonensis	Prune Elimia	Snail	X			X	X
Elimia cochliaris	Cockle Elimia	Snail	X			X	X
Elimia cylindracea	Cylinder Elimia	Snail	X			X	X
Elimia lachryma	Nodulose Coosa River Snail	Snail	X			X	X
Elimia nassula	Round-Rib Elimia	Snail	X			X	X
Elimia olivula	Caper Elimia	Snail	X			X	X
Elimia perstriata	Engraved Elimia	Snail	X			X	X
Elimia showalteri	Compact Elimia	Snail	X			X	X
Elimia teres	Elegant Elimia	Snail	X			X	X
Elimia vanuxemiana	Cobble Elimia	Snail	X			X	X
Floridobia mica	Ichetucknee Siltsnail	Snail	X			X	X
Floridobia monroensis	Enterprise Siltsnail	Snail	X			X	
Floridobia parva	Pygmy Siltsnail	Snail	X			X	
Floridobia ponderosa	Ponderosa Siltsnail	Snail	X			X	X
Floridobia wekiwae	Wekiwa Siltsnail	Snail	X			X	
Leptoxis arkansasensis	Arkansas Mudalia	Snail	X			X	X
Leptoxis picta	Spotted Rocksnail	Snail	X			X	X
Leptoxis virgata	Smooth Mudalia	Snail	X			X	X
Lithasia curta	Knobby Rocksnail	Snail	X			X	X
Lithasia duttoniana	Helmet Rocksnail	Snail	X			X	
Lo fluvialis	Spiny Riversnail	Snail	X			X	X
Marstonia agarhecta	Ocmulgee Marstonia	Snail	X			X	
Marstonia castor	Beaverpond Marstonia	Snail	X			X	X
Marstonia ozarkensis	Ozark Pyrg	Snail	X			X	
Planorbella magnifica	Magnificent Ram's-horn	Snail	X			X	X
Pleurocera corpulenta	Corpulent Hornsnail	Snail	X			X	X
Pleurocera curta	Shortspire Hornsnail	Snail	X			X	
Pleurocera pyrenella	Skirted Hornsnail	Snail	X			X	
Rhodacme elatior	Domed Ancylid	Snail	X			X	X
Somatogyrus alcoviensis	Reverse Pepplesnail	Snail	X			X	
Acroneuria kosztarabi	Virginia Stone	Stonefly	X			X	
Allocapnia brooksi	Sevier Snowfly	Stonefly	X			X	
Allocapnia fumosa	Smokies Snowfly	Stonefly	X			X	
Allocapnia cunninghami	Karst Snowfly	Stonefly	X			X	
Amphinemura mockfordi	Tennessee Forestfly	Stonefly	X			X	
Leuctra szczytkoi	Louisiana Needlefly	Stonefly	X			X	
Megaleuctra williamsae	Smokies Needlefly	Stonefly	X			X	X
Tallaperla lobata	Lobed Roachfly	Stonefly	X			X	
Aeschynomene pratensis	Meadow Joint-vetch	Vascular Plant	X			X	X
Alnus maritima	Seaside Alder	Vascular Plant	X			X	
Amorpha georgiana var. *georgiana*	Georgia Leadplant (GA Indigo Bush).	Vascular Plant	X			X	
Arnoglossum diversifolium	Variable-leaved Indian-Plantain	Vascular Plant	X			X	X
Balduina atropurpurea	Purple Balduina (Purpledisk honeycombhead).	Vascular Plant	X			X	

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS—Continued

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Baptisia megacarpa	Apalachicola Wild Indigo	Vascular Plant	X	X		X	X
Bartonia texana	Texas Screwstem	Vascular Plant	X			X	
Boltonia montana	Doll's-Daisy	Vascular Plant	X			X	
Calamovilfa arcuata	Rivergrass	Vascular Plant	X			X	
Carex brysonii	Bryson's Sedge	Vascular Plant	X			X	X
Carex impressinervia	Impressed-nerved Sedge	Vascular Plant	X			X	X
Coreopsis integrifolia	Ciliate-leaf Tickseed	Vascular Plant	X			X	
Croton elliottii	Elliott's Croton	Vascular Plant	X			X	
Elytraria caroliniensis var. *angustifolia.*	Narrowleaf Carolina Scalystem	Vascular Plant	X			X	
Encyclia cochleata var. *triandra*	Clam-shell Orchid	Vascular Plant		X		X	
Epidendrum strobiliferum	Big Cypress Epidendrum	Vascular Plant	X	X		X	X
Eriocaulon koernickianum	Small-headed Pipewort	Vascular Plant	X			X	
Eriocaulon nigrobracteatum	Black-bracket Pipewort	Vascular Plant	X			X	X
Eupatorium paludicola	A Thoroughwort	Vascular Plant	X			X	X
Eurybia saxicastellii	Rockcastle Wood-Aster	Vascular Plant	X			X	X
Fimbristylis perpusilla	Harper's Fimbristylis	Vascular Plant	X			X	
Forestiera godfreyi	Godfry's Privet	Vascular Plant	X			X	X
Hartwrightia floridan	Hartwrightia	Vascular Plant	X			X	
Helianthus occidentalis ssp. *plantagineus.*	Shinner's Sunflower	Vascular Plant	X			X	
Hexastylis speciosa	Harper's Heartleaf	Vascular Plant	X			X	X
Hymenocallis henryae	Henry's Spider-lily	Vascular Plant	X	X		X	
Hypericum edisonianum	Edison's Ascyrum	Vascular Plant	X			X	
Hypericum lissophloeus	Smooth-barked St. John's-wort	Vascular Plant	X			X	
Illicium parviflorum	Yellow Anisetree	Vascular Plant	X	X		X	
Isoetes hyemalis	Winter or Evergreen Quillwort	Vascular Plant	X			X	
Isoetes microvela	Thin-wall Quillwort	Vascular Plant	X			X	X
Lilium iridollae	Panhandle Lily	Vascular Plant	X	X	X	X	
Lindera subcoriacea	Bog Spicebush	Vascular Plant	X			X	X
Linum westii	West's Flax	Vascular Plant	X			X	
Lobelia boykinii	Boykin's Lobelia	Vascular Plant	X			X	X
Ludwigia brevipes	Long Beach Seedbox	Vascular Plant	X			X	
Ludwigia spathulata	Spathulate Seedbox	Vascular Plant	X			X	
Luwigia ravenii	Raven's Seedbox	Vascular Plant	X			X	X
Lythrum curtissii	Curtis's Loosestrife	Vascular Plant	X			X	
Lythrum flagellare	Lowland Loosestrife	Vascular Plant	X			X	
Macbridea caroliniana	Carolina Birds-in-a-nest	Vascular Plant	X			X	X
Marshallia grandiflora	Large-flowered Barbara's-buttons	Vascular Plant	X			X	
Minuartia godfreyi	Godfry's Stitchwort	Vascular Plant	X			X	
Najas filifolia	Narrowleaf Naiad	Vascular Plant	X		X	X	
Nuphar lutea ssp. *sagittifolia*	Cape Fear Spatterdock or Yellow Pond Lily.	Vascular Plant	X			X	X
Nuphar lutea ssp. *ulvacea*	West Florida Cow-lily	Vascular Plant	X			X	
Nyssa ursina	Bear Tupelo or Dwarf Blackgum	Vascular Plant	X			X	X
Oncidium undulatum	Cape Sable Orchid	Vascular Plant		X		X	
Physostegia correllii	Correll's False Dragonhead	Vascular Plant	X			X	
Potamogeton floridanus	Florida Pondweed	Vascular Plant	X			X	
Potamogeton tennesseensis	Tennessee Pondweed	Vascular Plant	X			X	X
Ptilimnium ahlesii	Carolina Bishopweed	Vascular Plant	X			X	X
Rhexia parviflora	Small-flower Meadow-beauty	Vascular Plant	X			X	X
Rhexia salicifolia	Panhandle Meadow-beauty	Vascular Plant	X			X	
Rhynochospora crinipes	Hairy-peduncled Beakbush	Vascular Plant	X			X	
Rhynchospora thornei	Thorne's Beakbush	Vascular Plant	X			X	
Rudbeckia auriculata	Eared Coneflower	Vascular Plant	X		X	X	X
Rudbeckia heliopsidis	Sun-facing Coneflower	Vascular Plant	X			X	
Salix floridana	Florida Willow	Vascular Plant	X			X	X
Sarracenia purpurea var. *montana*	Mountain purple pitcherplant	Vascular Plant	X	X		X	
Sarracenia rubra ssp. *gulfensis*	Gulf Sweet Pitcherplant	Vascular Plant	X			X	
Sarracenia rubra ssp. *wherryi*	Wherry's Sweet Pitcherplant	Vascular Plant	X			X	
Schoenoplectus hallii	Hall's Bulrush	Vascular Plant	X		X	X	X
Scutellaria ocmulgee	Ocmulgee Skullcap	Vascular Plant	X			X	X
Sideroxylon thornei	Swamp Buckhorn or GA Bully	Vascular Plant	X		X	X	
Solidago arenicola	Southern Racemose Goldenrod	Vascular Plant	X			X	X
Sporobolus teretifolius	Wire-leaved Dropseed	Vascular Plant	X			X	
Stellaria fontinalis	Water Stitchwort	Vascular Plant	X			X	X
Symphyotrichum puniceum var. *scabricaule.*	Rough-stemmed Aster	Vascular Plant	X			X	
Thalictrum debile	Southern Meadowrue	Vascular Plant	X			X	X
Trillium texanum	Texas Trillium	Vascular Plant	X			X	X

TABLE 2—THREATS FOR THE 374 SPECIES AS CLASSIFIED BY THE PETITIONERS—Continued

Scientific name	Common name	Taxon	Factor				
			A	B	C	D	E
Tsuga caroliniana	Carolina Hemlock	Vascular Plant	X	.....	X	X	.....
Vicia ocalensis	Ocala Vetch	Vascular Plant	X	.....	.....	X	X
Waldsteinia lobata	Lobed Barren-strawberry	Vascular Plant	X	.....	.....	X	X
Xyris longisepala	Kral's Yellow-eyed Grass	Vascular Plant	X	.....	.....	X	.....

Factor A: Present or threatened destruction, modification or curtailment of its habitat or range.
Factor B: Overutilization for commercial, recreational, scientific, or educational purposes.
Factor C: Disease or predation.
Factor D: Inadequacy of existing regulatory mechanisms.
Factor E: Other natural or manmade factors.

Evaluation of the Information Provided in the Petition and Available in Service Files

We reviewed and evaluated 374 of 404 species in the petition, as well as the additional information contained in the second petition for the Carolina hemlock and the supplemental information provided for the Panama City crayfish. Due to the large number of species reviewed, we were only able to conduct cursory reviews of the information in our files and the literature cited in the petition. For many of the narrowly endemic species included in the 374 species, we had no additional information in our files and relied solely on the information provided in the petition and provided through NatureServe.

Finding

On the basis of our evaluation under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information that listing 374 species (listed in Table 2) as endangered or threatened under the Act may be warranted. This finding is based on information provided under Factors A, B, C, D, and E. Because we have found that the petition presents substantial information indicating that listing may be warranted, we are initiating status reviews to determine whether listing these species under the Act is warranted.

In addition, we find that the petition presents substantial scientific or commercial information indicating that listing 18 species that are current candidate species or the subjects of proposed rules to list may be warranted. The 18 species (listed with details in the *Petition History* section) are sicklefin redhorse, laurel dace, spectaclecase, narrow pigtoe, round ebonyshell, southern sandshell, sheepnose, fuzzy pigtoe, southern kidneyshell, rabbitsfoot, tapered pigtoe, Choctaw bean, rayed bean, black mudalia, Coleman cave beetle, Black Warrior waterdog, Yadkin River goldenrod, and the snuffbox. As a warranted determination for listing has already been made for these species, we will not be initiating status reviews for these species at this time. Further information on the assessments for these 18 species can be found at *http://ecos.fws.gov/tess_public/.*

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

We previously determined that emergency listing of any of the 404 petitioned species is not warranted. However, if at any time we determine that emergency listing of any of the species is warranted, we will initiate an emergency listing at that time.

The petitioners requested that critical habitat be designated concurrent with listing under the Act. If we determine in our 12-month finding, following the status review of the species, that listing is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Southeast Ecological Services Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Southeast Region Ecological Services Offices.

Authority: The authority for this action is Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: September 12, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

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Part V

Department of Education

34 CFR Part 600

Application and Approval Process for New Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 600

RIN 1840–AD10

[Docket ID ED–2011–OPE–0011]

Application and Approval Process for New Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), to streamline the application and approval process for new educational programs that qualify for student financial assistance under title IV of the HEA.

DATES: We must receive your comments on or before November 14, 2011.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: John Kolotos, U.S. Department of Education, 1990 K Street, NW., room 8018, Washington, DC 20006–8502. Telephone: (202) 502–7762 or by e-mail: *John.Kolotos@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. Please do not submit comments outside the scope of the specific proposals in this notice of proposed rulemaking (NPRM). We will not respond to comments that do not specifically relate to the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and Executive Order 13563 and their overall direction to Federal agencies to reduce regulatory burden where possible. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's student aid regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking and Background of These Proposed Regulations

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/leg/hea08/index.html#neg-reg.*

Between November, 2009 and January, 2010, the Department held three negotiated rulemaking sessions aimed at improving integrity in the title IV, HEA programs. As a result of these discussions, during which consensus was not reached, the Department published two notices of proposed rulemaking, one on June 18, 2010 (June 18th NPRM) and one on July 26, 2010 (July 26th NPRM). The July 26th NPRM focused specifically on the issue of ''gainful employment'' and the June 18th NPRM covered the remaining Program Integrity issues. After considering public comments on the June 18th NPRM, the Department published final regulations on October 29, 2010 (75 FR 66832) (Program Integrity Issues), which included requirements for institutions to disclose and report information about gainful employment programs. After considering comments on the July 26th NPRM related to new programs, the Department published final regulations on October 29, 2010 (75 FR 66665) (Gainful Employment—New Programs), which included requirements for institutions to notify the Department before offering a new educational program that provides training leading to gainful employment in a recognized occupation (gainful employment program). Through this notification process, the Department may advise an institution that it must obtain approval to establish the eligibility of an additional gainful employment program for purposes of the title IV, HEA programs.

The Department established the notification requirement out of concern that some institutions might attempt to circumvent the proposed gainful employment standards in § 668.7(a)(1)

of the July 26th NPRM by adding new programs before those standards could take effect. The Department explained that the notification process requirements, referred to as ''interim requirements,'' were intended to remain in effect until the final regulations that established eligibility measures for gainful employment programs would take effect. Specifically, we stated that with regard to approving additional programs, ''[w]e intend to establish performance-based requirements in subsequent regulations'' and that ''[u]ntil those subsequent regulations take effect, institutions must comply with the interim requirements in [the Gainful Employment—New Programs final] regulations'' (75 FR 66671).

We published the final regulations establishing the gainful employment eligibility measures on June 13, 2011 (76 FR 34386) (Gainful Employment—Debt Measures). In those regulations, the Department established measures for gainful employment programs that are intended to identify the worst performing programs. For gainful employment programs that fail those measures, an institution will be required to provide warnings to enrolled and prospective students for up to three years or until the programs lose eligibility for title IV, HEA funds. Under these measures, institutions may also choose to voluntarily discontinue a failing program.

The Gainful Employment—Debt Measures final regulations also place restrictions on when an institution may reestablish the eligibility of an ineligible program or a failing program that was voluntarily discontinued, or establish the eligibility of a new program that is substantially similar to an ineligible program. However, we do not believe that when these new provisions go into effect on July 1, 2013, the notification process for all new gainful employment programs established in the Gainful Employment—New Programs final regulations will be needed and therefore are seeking input from the public on this issue through these proposed regulations.

In this NPRM, among other changes, we propose to eliminate the notification process for new gainful employment programs by amending the Gainful Employment—New Programs final regulations to establish a smaller group of gainful employment programs for which an institution must obtain approval from the Department. We believe that with these changes, these proposed regulations will significantly reduce burden on institutions and the Department while still ensuring the effectiveness of the debt measures established in the Gainful Employment—Debt Measures final regulations.

The Department used the negotiated rulemaking process to discuss its proposal to define eligibility for gainful employment programs using metrics. Following the completion of the negotiated rulemaking sessions, the Department published the July 26th NPRM and received over 90,000 comments in response to those proposed regulations. These proposed regulations arise from those discussions, proposals, and comments submitted, and, per the Department's stated goal in the Gainful Employment—New Programs final regulations, would establish a simplified process for institutions to establish the eligibility of new gainful employment programs now that the gainful employment measures have been finalized. The discussions about new programs during negotiated rulemaking, and the comments received on the July 26th NPRM, were focused on the nature of the requirements that would be in place at the conclusion of the rulemaking process. For these reasons, the Department has determined that it is not necessary to conduct additional negotiations to discuss the proposed requirements regarding the approval of new gainful employment programs. The Department is publishing new proposed regulations and requesting additional public comment because the proposed changes will modify the Gainful Employment—New Programs final regulations that require institutions to provide notice to the Department for all new gainful employment programs.

Summary of Proposed Changes

These proposed regulations would amend the application process for new programs by—

- Limiting the new gainful employment programs for which an institution must apply to the Department to those programs that are (1) the same as, or substantially similar to, failing programs that the institution voluntarily discontinued or programs that became ineligible under the debt measures for gainful employment programs, and (2) programs that are substantially similar to failing programs;
- Specifying that a program is substantially similar if it has the same credential level and the same first four digits of the CIP code as that of a failing program, a failing program the institution voluntarily discontinued, or an ineligible program;
- Clarifying that there are separate application requirements for establishing the eligibility of other educational programs such as direct assessment programs and comprehensive transition and postsecondary programs;
- Providing that if the Secretary notifies an institution, the institution must apply for approval of a new educational program;
- Revising the documentation that must be included in an institution's application to establish the eligibility of a new gainful employment program;
- Specifying that the Secretary may request additional information from the institution prior to making an eligibility determination for a new gainful employment program;
- Specifying that the Secretary, in making an eligibility determination, will take into account whether the processes used and determinations made by the institution to offer the program are sufficient and will consider the performance of the institution's other gainful employment programs; and
- Specifying that if the Secretary denies the eligibility of a new gainful employment program, the Secretary will inform an institution of the reasons for the denial and the institution may request that the Secretary reconsider the determination.

Significant Proposed Regulations

Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

Classification of Instructional Programs (CIP) Code

Statute: Section 481 of the HEA (20 U.S.C. 1088) provides definitions for the General Provisions Relating to Student Financial Assistance Programs. It does not provide a definition of *Classification of instructional programs or CIP.*

Current regulations: The classification of instructional programs (CIP) code is described under current § 600.10(c)(2)(i).

Proposed regulations: We propose to relocate the current description of the CIP to § 600.2, Definitions. Under this section, the CIP would be defined as ''a taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics.''

Reasons: This is merely a technical change that would include the definition of the term *Classification of*

instructional programs or CIP among the definitions of other terms used in part 600 of the title IV, HEA program regulations.

New Educational Programs

Statute: With regard to eligibility for funds under title IV of the HEA, section 481 of the HEA defines an eligible program (20 U.S.C. 1088(b)), and section 498 of the HEA provides for the eligibility of institutions of higher education (20 U.S.C. 1099c).

Current regulations: Under current § 600.10(c)(1), an institution that intends to add a gainful employment program, as provided under 34 CFR 668.8(c)(3) or (d), must notify the Department at least 90 days before the first day of class for that program. The institution may proceed to offer the program described in its notice to the Secretary, unless the Department advises the institution that the program must be approved under § 600.20(c)(1)(v). Except for direct assessment programs under 34 CFR 668.10, or pursuant to a requirement included in an institution's program participation agreement (PPA) under 34 CFR 668.14, an institution does not have to apply to the Department for approval to add any other type of educational program.

Under § 600.20(c)(2), an institution that wishes to expand the scope of its eligibility by increasing its level of program offerings (e.g., adding graduate degree programs when it previously offered only baccalaureate degree programs) must apply to the Secretary for approval of that expanded scope.

Under 34 CFR 668.10(b), an institution that offers a direct assessment program must apply to the Secretary to establish the eligibility of that program for title IV, HEA program funds.

Under 34 CFR 668.13(c)(4)(ii), the Secretary may condition the provisional certification of an institution by specifying compliance requirements in the institution's PPA.

Under 34 CFR 668.14(a), the Secretary may condition an institution's participation in the title IV, HEA programs by specifying compliance requirements in the institution's PPA. We note that the Secretary may specify compliance requirements regardless of whether the institution is provisionally certified under 34 CFR 668.13(c).

Under 34 CFR 668.232, an institution that offers a comprehensive transition and postsecondary program must apply to the Secretary to establish the eligibility of that program for title IV, HEA program funds.

Proposed regulations: In proposed § 600.10(c)(1), we specify that an institution would not have to apply to the Secretary for approval of a new educational program unless the institution is required to obtain the Secretary's approval under the provisions in § 600.20(c)(2), § 600.20(d)(2), 34 CFR 668.10(b), 34 CFR 668.14(a)(1), or 34 CFR 668.232, or the Secretary notifies the institution that it must apply for approval.

Instead of subjecting all gainful employment programs to a notice process or a notice and approval process, we propose in § 600.10(c)(1), by reference to § 600.20(d)(2), to limit required approvals to new gainful employment programs that are the same as or substantially similar to programs that performed poorly under the debt measures in 34 CFR 668.7(a). As discussed more fully under the heading *Application requirements,* in proposed § 600.20(d) an institution would have to obtain the Department's approval only if a gainful employment program (1) is the same as, or substantially similar to, a failing program that the institution voluntarily discontinued under 34 CFR 668.7(l)(1) or a program that became ineligible under 34 CFR 668.7(i), or (2) is substantially similar to a failing program under 34 CFR 668.7(h).

Reasons: The changes we are proposing in § 600.10(c)(1)(i), would clarify the approval provisions that apply to new programs by providing references for existing approval requirements in one regulatory provision. We are proposing in § 600.10(c)(1)(ii) that institutions must apply for approval of new programs if the Secretary notifies them they must do so, in order to ensure that the Secretary has sufficient discretion to assess whether a new program would serve students effectively. For example, the Secretary would have the discretion to notify an institution that it must apply for approval for a new program due to material audit or program review deficiencies such as late or unmade refunds, verification issues, failure to provide timely notices of significant events, or other conditions that adversely affect its administrative or financial capability, including the performance of its gainful employment programs under the debt measures in 34 CFR 668.7.

Our proposed approach in § 600.10(c)(1) and § 600.20(d)(2) is consistent with the approach taken in the Gainful Employment—Debt Measures final regulations in that both sets of regulations focus on poorly performing gainful employment programs. Moreover, by publishing these proposed regulations we are carrying out the commitment made in the Gainful Employment—New Programs final regulations (75 FR 66669), to establish performance-based standards for approving new programs. Compared to the current regulations for new programs, this performance-based approach would decrease burden for institutions and the Department by eliminating the notice and approval process for many new gainful employment programs. We believe that this tailored program approval process would protect student borrowers while reducing institutional costs and burden.

Application requirements.

Statute: With regard to eligibility for funds under title IV of the HEA, section 481 of the HEA defines an eligible program (20 U.S.C. 1088(b)), and section 498 of the HEA provides for the eligibility of institutions of higher education (20 U.S.C. 1099c).

Current regulations: Under the current procedures in § 600.20(d)(1), an institution must notify the Department of its intent to offer an additional educational program, or submit an application requesting approval to expand the institution's eligibility. The institution must provide, in a format prescribed by the Secretary, all the information and documentation requested by the Department to make a determination of the program's eligibility or institutional certification. For a new gainful employment program, an institution must notify the Department at least 90 days before the first day of class for that program. Unless the Department alerts the institution at least 30 days before the first day of class that the program must be approved for title IV, HEA program purposes, the institution may disburse title IV, HEA program funds to students enrolled in the program. However, if an institution does not notify the Department before the 90-day period, it must obtain the Department's approval before disbursing title IV, HEA program funds to students in the program. In any case, whenever a new gainful employment program must be approved, the Department treats the institution's notice as an application for that program. The Department may approve the institution's application or request more information prior to making a determination of whether to approve or deny the eligibility of the new educational program.

In reviewing the institution's application, the Department takes into account the following factors:

(1) The institution's demonstrated financial responsibility and

administrative performance in operating its existing programs.

(2) Whether the additional program is one of several new programs that will replace similar programs currently provided by the institution, as opposed to supplementing or expanding the current programs provided by the institution.

(3) Whether the number of additional programs being added is inconsistent with the institution's historic program offerings, growth, and operations.

(4) Whether the process and determination by the institution to offer the additional program is sufficient.

If the Department denies an application from an institution to offer a new education program, the Department explains how the institution failed to demonstrate that the program is likely to lead to gainful employment in a recognized occupation. The institution may respond to the reasons for the denial, and request that the Department reconsider its determination. The Department bases its determination to deny an application on factors (2), (3) and (4).

Under § 600.20(d)(2), whenever an institution notifies the Department of its intent to offer an additional gainful employment program, the institution must include in its notice:

- A description of how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. The description must contain any wage analysis the institution may have performed, including any consideration of Bureau of Labor Statistics (BLS) data related to the program;
- A description of how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program;
- Documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; and
- The date of the first day of class of the new program.

Proposed regulations: In § 600.20(d)(1) we propose to eliminate the current notice requirements in favor of a more streamlined approach under which an institution would simply apply to establish the eligibility of a gainful employment program.

Under proposed § 600.20(d)(2), an institution that seeks to establish the eligibility of a gainful employment program must submit an application to the Department only if that program (1) is the same as, or substantially similar to, a failing program that was voluntarily discontinued by the institution under 34 CFR 668.7(l)(1) or a program that became ineligible for title IV, HEA program funds under 34 CFR 668.7(i), or (2) is substantially similar to a program designated as a failing program under 34 CFR 668.7(h) for any one of the two most recent fiscal years (FYs). For this purpose, a program is substantially similar if it has the same credential level and the same first four digits of the CIP code as that of a failing program, a failing program the institution voluntarily discontinued, or an ineligible program. In proposed § 600.20(d)(3), while we are not proposing to change the core requirements under current § 600.20(d)(2)(i), (d)(2)(ii), (d)(2)(iii), or (d)(2)(iv), we would augment those requirements by having the institution include in its application:

- A wage analysis of the new program performed by or on behalf of the institution. This wage analysis would need to include supporting documentation based on the best data that is reasonably available to the institution;
- Compared to the failing or ineligible program, a description of the enhancements or modifications the institution made to improve the new program's performance under the gainful employment standards in 34 CFR 668.7(a); and
- The CIP code and credential level of the new program, along with a description of how the institution determined that CIP code.

We would relocate the approval provisions in current § 600.20(d)(1)(ii)(E) and (F) to proposed § 600.20(d)(4) and amend those provisions. Under this section, the Department would determine whether to approve the eligibility of a new program by taking into account (1) the institution's demonstrated financial responsibility and administrative capability in operating its existing programs, (2) whether the processes used and determinations made by the institution to offer the new program, as described by the institution in its application, are sufficient, and (3) the performance under 34 CFR 668.7 of the institution's other gainful employment programs. Before making that determination, the Department may request additional information from the institution. If the Department denies the institution's eligibility for a new gainful employment program, we inform the institution of the reasons for the denial and the institution may request that we reconsider our determination.

These proposed regulations reflect the approach taken in the Gainful Employment—Debt Measures final regulations under which the Department identifies failing programs under the debt measures for gainful employment programs and uses those measures over time to determine if a program becomes ineligible or when it may apply to regain eligibility. Thus, we are proposing to require institutions to submit applications for approval for new programs that are substantially similar to failing programs that they offer and failing programs that they voluntarily discontinued. Consequently, in proposed § 600.20(d)(2) an institution must apply for approval of a new program if it is (1) substantially similar to a program designated as a failing program for any one of the two most recent fiscal years, (2) the same as or substantially similar to a failing program the institution voluntarily discontinued, or, (3) the same or substantially similar to an ineligible program that the institution offered. We note that under 34 CFR 668.7(l) of the Gainful Employment—Debt Measures final regulations, an institution must delay submitting an application for two or three years if it seeks to (1) Reestablish the eligibility of a program that became ineligible under the debt measures, (2) reestablish the eligibility of a failing program that the institution voluntarily discontinued, or (3) establish the eligibility of a program substantially similar to an ineligible program. For clarity, we are restating these requirements in proposed § 600.20(d)(2)(iii). Under these proposed regulations, an institution would not have to delay submitting an application for a program that is substantially similar to a failing program that an institution offers or substantially similar to a failing program that the institution voluntarily discontinued.

Reasons: Because we will use the debt measures under 34 CFR 668.7 to identify the gainful employment programs that are subject to approval, it is no longer necessary to screen all potential program applications through the current notice process. Therefore, we are proposing to revise the application requirements in § 600.20(d)(2). We note that the Department will obtain an updated

listing of all gainful employment programs, including new programs, under the annual reporting requirements in 34 CFR 668.6. Using that information, the Department will be able to monitor whether an institution obtained any needed approvals for new programs.

With regard to the provision in proposed § 600.20(d)(2)(i)(B), that an institution must apply for approval of a program that is substantially similar to a program designated as a failing program for any one of the two most recent fiscal years, we note that this approach parallels the approach for ineligible programs under 34 CFR 668.7(i). Under that section, a program becomes ineligible if it fails the debt measures under 34 CFR 668.7(a) for three out of the four most recent fiscal years. For example, a program becomes ineligible if it fails the first and second FYs, passes the third FY, but fails the fourth FY. This approach prevents a program that generally fails the debt measures from remaining eligible by simply passing the measures in one year. Likewise, under the approach proposed in these regulations, an institution would have to apply for approval of a program that is substantially similar to a program designated as a failing program under 34 CFR 668.7(h) for any one of the two most recent fiscal years.

Our proposal to require a wage analysis in § 600.20(d)(3)(v) stems, in part, from comments received on the July 26th NPRM regarding the proposal under which an institution would have to submit employer affirmations and enrollment projections when obtaining approval of a new program. The Department deferred addressing those comments in the Gainful Employment—New Programs final regulations. For the benefit of the reader, we summarize those comments in the following discussion and respond to them to provide context and our reasons for the proposed regulations regarding wage analysis.

Several of the commenters supported the employer affirmation requirements as a borrower protection, but suggested that the Department should also require (1) Employers to specify the location of anticipated job vacancies, (2) employers to identify the number of current or expected job vacancies and whether the vacancies are for full-time, part-time, or temporary jobs, (3) that affirmations apply to time periods related to the length of the program, (4) that employers may not provide affirmations to several different institutions if the employer does not have jobs for the graduates from all those institutions, and (5) a standardized form to ensure that employer affirmations are clear and uniform.

Many other commenters, however, objected to the requirement to provide employer affirmations, stating that such a process would be costly and cumbersome to implement for both institutions and the Department and that the proposal requiring employer affirmations was too vague. Some commenters were concerned that employers would not be qualified to assess the quality of an institution's curriculum and that employers would be unwilling to affirm job openings or expected demand because of the liability risks of making such an affirmation and uncertainty about future economic conditions. Several commenters objected to the requirement that employers cannot be affiliated with the institution to which they provide the affirmation. The commenters stated that, as a common business practice, many schools work closely with employers that hire their students, and that such a prohibition would, in many cases, eliminate an institution's ability to offer new gainful employment programs. Finally, several commenters suggested that the Department rely on BLS data instead of employer affirmations to evaluate expected demand because it is readily available and institutions can confirm demand before spending substantial sums for the development of an additional program.

With regard to enrollment projections, several commenters asked the Department to clarify the enrollment projection requirement in proposed § 668.7(g)(1)(ii) of the July 26th NPRM. Specifically, the commenters asked how an institution would determine projected enrollment, how the Department would use the projections, and whether an institution would be able to update its projections. Another commenter stated that rather than the Department attempting to control the number of individuals entering an occupation by limiting the students who enroll in a particular program, students should have the option of choosing a program as long as the program satisfies the standards of quality established by the institution's accrediting agency.

Although we believe that employer affirmations can be useful in evaluating whether a program is designed to meet, or historically met, employer and student needs and market demand, in view of the comments that the affirmations could be costly or difficult to obtain, or that some employers are not qualified to assess the quality of a program's curriculum, we are not proposing in these regulations that institutions obtain employer affirmations. Instead, we propose that an institution must submit a wage analysis whenever it seeks to reestablish the eligibility of an ineligible program or a failing program that it voluntarily discontinued, or to establish the eligibility of a substantially similar program. The wage analysis would need to include supporting documentation based on the best data that is reasonably available to the institution.

We believe the following elements should be included in a wage analysis based on the best data reasonably available to the institution:

(1) The typical first-year annual earnings of students who would complete the program and the typical earnings of those students after a few years of employment;

(2) The short- and long-term market demand for jobs or occupations stemming from the training provided by the program;

(3) A sample of the types and names of the businesses or employers most likely to employ the program's graduates; and

(4) The amount of tuition and fees the institution will charge for the program and the typical loan debt a student would incur in completing the program.

Data that may be reasonably available to the institution could include BLS data or data provided by businesses or employers consulted in developing the program. However, if the institution uses BLS data we expect the institution to show how the BLS data correlates to, or sufficiently represents, the likely earnings of its program graduates and the likely demand for jobs or occupations stemming from the program. We invite comments on the proposed wage analysis requirement, and are particularly interested in comments on the elements to be included in the wage analysis and the types of data that we should require to support these elements. We believe that a wage analysis is a necessary part of the institution's due diligence in developing or revising a previously ineligible or a failing program that it voluntarily discontinued, or a substantially similar program, because it supports an overall eligibility determination that, due to the program improvements, there is a reasonable expectation that the program will satisfy the debt measures.

We also reject the suggestion by some commenters that asking an institution to provide enrollment projections for an additional program is tantamount to controlling enrollment in that program. This information may be useful when evaluating whether a program is supposed to replace an existing program

over time, and provides some measure of the relative impact that program would have compared to the size of the institution and other programs it offers. Nevertheless, in view of the comments that providing estimated enrollment data may be complicated, we are not proposing this requirement in these regulations. However, the Department may request, as needed, additional information from an institution about its enrollment projections on a case-by-case basis.

With regard to the other application requirements in proposed § 600.20(d)(3)(vi) and (vii), the Department needs assurance from an institution that (1) the enhancements and modifications it made to a failing or ineligible program are likely to improve the new program's performance under the debt measures in 34 CFR 668.7(a), and (2) it assigned the correct CIP code to the new program. We are proposing these regulations because we are concerned that an institution may attempt to circumvent the two- or three-year ineligibility period for a failing program that it voluntarily discontinued by portraying that program in its application as a substantially similar program.

With regard to the eligibility determination provisions in proposed § 600.20(d)(4), we note that most of these provisions are the same as those in the current regulations under § 600.20(d)(1)(ii)(E) and (F). The primary difference is in proposed § 600.20(d)(4)(i)(B), under which we would take into account the performance of an institution's other gainful employment programs under the debt measures in § 668.7(a) in determining whether to approve the institution's application for a new program. We believe that it would be useful to consider the performance history of the institution's programs, particularly since the debt measures under § 668.7(a) will not be calculated for the new program for at least three or four years. Moreover, we believe that an institution's performance history is an important component in determining whether to approve the eligibility of a new gainful employment program because it provides an understanding of the program in context, and thus, allows for a more informed determination.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in regulations that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as ''economically significant'' regulations); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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 the Executive order.

It has been determined that this regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866.

In accordance with the Executive order, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading

Paperwork Reduction Act of 1995

In assessing the potential costs and benefits of this regulatory action, we have determined that the benefits of the regulatory action justify the costs.

The Department has also reviewed these regulations pursuant to Executive Order 13563, published on January 21, 2011 (76 FR 3821). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, improving regulation and regulatory review, the Office of Information and Regulatory Affairs has emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only after making a reasoned determination that their benefits justify their costs and we selected, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Based on this analysis and for the additional reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Need for Federal Regulatory Action

Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' When the Gainful Employment—New Programs final regulations were published, the final gainful employment debt measures had not been established. The Department specified at that time that it intended to establish performance-based requirements with regard to approving additional programs once regulations for the gainful employment debt measures were

finalized. Those debt measures have now been finalized through the Gainful Employment—Debt Measures final regulations. Thus, these proposed regulations are necessary to ensure that the procedures for establishing new gainful employment programs are aligned with those measures and our intent to target the worst-performing programs, while allowing innovation and expansion by institutions with a track record of establishing successful programs.

Regulatory Alternatives Considered

As part of an extensive rulemaking process over the last two years, the Department considered a number of alternatives to these proposed regulations.

July 26th NPRM

In the July 26th NPRM, the Department proposed a requirement that would require an institution to submit employer affirmations and enrollment projections in order to demonstrate the need for and value of the program to be established. We received a number of comments opposing our proposal. These comments noted that the fact that some programs prepare students for nationwide opportunities could make it difficult for institutions to obtain nonaffiliated employer affirmations. The commenters expressed concern that the proposed process would hamper the development of innovative programs related to emerging fields of employment. Commenters also said that they believed that employers would be reluctant to offer affirmations for fear of it being construed as a commitment to hire. With regard to enrollment projections, several commenters asked the Department to clarify the enrollment projection requirement in proposed § 668.7(g)(1)(ii) of the July 26th NPRM. Specifically, the commenters asked how an institution would determine projected enrollment, how the Department would use the projections, and whether an institution would be able to update its projections. Another commenter stated that rather than the Department attempting to control the number of individuals entering an occupation by limiting the students who enroll in a particular program, students should have the option of choosing a program as long as the program satisfies the standards of quality established by the institution's accrediting agency.

Gainful Employment—New Programs

In the Gainful Employment—New Programs final regulations, we established a process for institutions to notify the Department before enrolling students in a new gainful employment program. We took this action out of concern that some institutions might attempt to circumvent the proposed gainful employment standards in the July 26th NPRM by adding new programs before those standards could take effect. These provisions were intended to serve as interim requirements until the final gainful employment debt measures could be finalized. In those regulations, we also indicated that we would defer our consideration of the comments regarding employer affirmations until we finalized the debt measures regulations.

Under the Gainful Employment—New Programs final regulations, institutions must notify the Department within certain time limits before starting new gainful employment programs. The notice must describe or document: (1) How the institution determined the need for the new program and how the program was designed to meet local market needs, or for an online program, regional or national market needs by, for example, consulting BLS data or State labor data systems or consulting with State workforce agencies; (2) how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program; (3) that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; (4) how the program would be offered in connection with, or in response to, an initiative by a governmental entity; and (5) any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program.

With the publication of the Gainful Employment—Debt Measures final regulations, and as discussed elsewhere in our discussion of these proposed regulations, we no longer believe that the notification process is necessary and are therefore proposing a streamlined approval process that targets only the worst-performing programs.

Benefits

We are establishing a process for institutions to apply to the Department for approval of new programs that are (1) the same as, or substantially similar to, failing programs that the institution voluntarily discontinued or programs that became ineligible under the debt measures for gainful employment programs, and (2) programs that are substantially similar to failing programs, in part, to ensure that institutions do not circumvent the debt measures we recently established in the Gainful Employment—Debt Measures final regulations. These proposed regulations clarify and streamline the review and approval process for new gainful employment programs by eliminating the requirement that institutions submit information for all new gainful employment programs in order to obtain approval, and narrowing the scope of new programs for which an institution must submit an application for approval. This streamlined process should reduce the administrative burden on institutions and the Department and allow institutions with a strong track record of establishing programs that perform well on the gainful employment debt measures to continue to innovate and expand their program offerings without having to notify the Department each time they offer a new program.

We also see as a key benefit of our proposal that institutions would have to demonstrate, in applying for approval of a new program, how they enhanced or modified the ineligible or failing program to improve the program's performance under the debt measures. We believe that over time, this should result in increased quality in the pool of programs from which students can choose to attend.

Costs

The main costs of these proposed regulations derive from the administrative and paperwork burden associated with applying for approval of a new program. Much of the information required to be included in an application for new program eligibility would be generated as a school reaches its decision to develop a new program. Accordingly, many entities wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs that would be related to implementing these proposed regulations, and additional costs would primarily be due to documenting the program development process. Other institutions may have to establish a program development process, but the regulations allow flexibility in meeting the core requirements.

In assessing the potential economic impact of these regulations, the

Department recognizes that compliance with the proposed regulations may result in an increased workload for some institutions but overall, when compared to the burden outlined in the July 26th NPRM and the burden outlined in the Gainful Employment—New Programs final regulations, there will be a net reduction in burden. Additional costs would normally be expected to result from either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities.

In the July 26th NPRM, we estimated that the burden to institutions of researching and establishing new programs would be 8,450 hours, or $175,000 per year. In the Gainful Employment—New Programs final regulations, we estimated that the burden on institutions in complying with the notification process would be 3,591 hours, or $91,032 per year.

As described in the *Paperwork Reduction Act of 1995* section of this preamble, following issuance of the Gainful Employment—New Programs final regulations, the Department continued to review the estimates of new programs that would be subject to the notice requirement in those regulations. Based on that analysis and specifically, an increase in the estimated number of new program applications, we have revised the estimated burden of the Gainful Employment—New Programs final regulations from 3,591 hours to 12,343 hours. Based on a wage rate of $25.35, this results in a revised estimate of $312,895 for complying with the Gainful Employment—New Programs final regulations.

The changes proposed in this NPRM are expected to reduce burden by 7,068 hours to an estimated 5,275 hours, primarily by restricting the application requirement to programs that are the same as or substantially similar to failing programs voluntarily discontinued or ineligible programs, or the same as a failing program under 34 CFR 668.7(h). Thus, the estimated cost is also reduced to $133,721.

Given the limited data available, the Department is particularly interested in comments and supporting information related to possible burden stemming from these proposed regulations. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Net Budget Impacts

The proposed regulations are not estimated to have a net budget impact as the changes in the process for establishing new programs is not expected to change the demand for programs. While the process to establish new programs will be easier for institutions with a track record of successful programs, it is only in their interest to establish new programs if the new programs will pass the gainful employment debt measures. Program expansion and contraction occur on a regular basis and the change in the process to establish eligibility is not expected to affect capacity in a way that would impact the Federal student aid programs.

Assumptions, Limitations, and Data Sources

In developing these estimates, a wide range of data sources was used, including data from the National Student Loan Data System (NSLDS); operational and financial data from Department of Education systems; and data from a range of surveys conducted by the National Center for Education Statistics (NCES) such as the 2007–2008 National Postsecondary Student Aid Study (NPSAS), the 2008–09 Integrated Postsecondary Education Data System (IPEDS), and the 2009 follow-up to the 2004 Beginning Postsecondary Students Longitudinal Study (BPS). Data from other sources, such as the U.S. Census Bureau and the Missouri Department of Higher Education, were also used. The estimates for the number of programs affected were derived from the estimates described in the Gainful Employment—Debt Measures final regulations. Data on administrative burden at participating institutions are extremely limited; accordingly, the Department is interested in receiving comments in this area. As additional data become available, the Department may update these estimates.

We identify and explain burdens specifically associated with information collection requirements in the *Paperwork Reduction Act of 1995* section of the preamble.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf,* in Table A as follows, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal student aid programs to students.

TABLE A—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Costs
Reduction in Cost of Paperwork Burden	($.13).
Category	Transfers.
Annualized Monetized Transfers	$0.
From Whom To Whom?	N/A.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 600.2 Definitions.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations would affect institutions that participate in title IV, HEA programs and loan borrowers. The definition of ''small entity'' in the Regulatory Flexibility Act encompasses ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The definition of ''small business'' comes from the definition of ''small business concern'' under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration (SBA). The SBA defines a ''small business concern'' as one that is ''organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor * * *'' ''Small organizations,'' are further defined as any ''not-for-profit enterprise that is independently owned and operated and not dominant in its field.'' The definition of ''small entity'' also includes ''small governmental jurisdictions,'' which includes ''school districts with a population less than 50,000.''

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 4,379 institutions participating in the Federal student assistance programs meet the definition of ''small entities.'' The following table provides the distribution of institutions and students by revenue category and institutional control.

Table B: Institutional Characteristics of Small Entities by Sector

	Number of Institutions	Share of Sector Tuition and Fee Revenue	Total Programs	Number of Regulated Programs	Number of Large Regulated Programs	Share of Programs that Are Large Regulated	Share of Enrollment in Large Regulated Programs
4-year Institutions							
Public	4	0%	21	7	1	5%	0%
Private Nonprofit	356	2%	2,585	346	68	3%	0%
Private For-profit	52	1%	342	342	116	34%	1%
2-year Institutions							
Public	88	1%	1,669	1,382	568	34%	0%
Private Nonprofit	142	43%	549	280	170	31%	29%
Private For-profit	405	17%	2,191	2,187	1,152	53%	20%
Less-than-2-year Institutions							
Public	202	68%	1,483	1,482	669	45%	38%
Private nonprofit	61	62%	218	213	127	58%	52%
Private For-profit	983	40%	3,264	3,255	2,027	62%	45%

Source: IPEDS.

Approximately two-thirds of these institutions are for-profit schools that would be subject to these proposed regulations. Other affected small institutions include small community colleges and tribally controlled schools. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

We estimated in the Gainful Employment—Debt Measures final regulations that approximately 3 percent of programs at small entities across all sectors would fail the measures at least once. The changes to the process for establishing new gainful employment programs that we are proposing in this NPRM would eliminate the notice requirement for the vast majority of programs at small entities because most gainful employment programs offered at those institutions are expected to pass the gainful employment measures. For institutions that choose to pursue establishing the title IV, HEA eligibility for a new program associated with a program that failed the gainful employment measures, the proposed regulations consolidate the notice and application process from the Gainful Employment—New Programs regulations and build on existing processes for determining if the Department will approve the new program.

As detailed in the *Paperwork Reduction Act of 1995* section of this preamble, institutions would only have to apply to establish gainful employment programs that are the same as or substantially similar to programs that are ineligible or that have been voluntarily withdrawn or programs that are substantially similar to failing programs. There are no explicit growth limitations or employer verification requirements. The estimated total hours, costs, and requirements applicable to small entities from these provisions on an annual basis are 3,165 hours and $80,233, based on a wage rate of $25.35. This represents a decrease from the revised estimated burden associated with the Gainful Employment—New Programs regulations of 7,406 hours and $187,737.

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

No alternative provisions were considered that would target small institutions with exemptions or additional time for compliance as this provision builds on existing industry

practices. The Secretary invites comments from small institutions and other affected entities as to whether they believed the proposed changes would have a significant economic impact on them and requests evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

Proposed § 600.20 contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review.

A Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control number assigned by OMB to any information collection requirement in these proposed regulations and adopted in the final regulations.

Estimating the Number of New Gainful Employment Programs

Since the publication of the Gainful Employment—New Program final regulations, we have continued to analyze the number of gainful employment programs that have been submitted to the Department for approval. We now estimate, based on the following information, that institutions will submit a total of 4,527 new gainful employment programs to the Department for approval annually.

With respect to nondegree programs, in 2009, there were 4,852 new gainful employment nondegree programs submitted to the Department by institutions. In 2010, there were 3,318 new gainful employment nondegree programs submitted to the Department for approval. We have averaged these two numbers to estimate the annual number of new gainful employment nondegree programs established by institutions to be 4,085 (4,852 plus 3,318 equals 8,170, which we then divided by 2). The total number of new gainful employment nondegree programs by institutional type is 540 new nondegree programs at proprietary institutions; 433 new nondegree programs at private nonprofit institutions; and 3,112 new nondegree programs at public institutions.

With respect to degree programs, we do not currently maintain records concerning the number of new gainful employment degree programs that are established by institutions on an annual basis. Previously, we have only required that institutions report new degree programs periodically at the time of recertification. We determined from a review of the June 13, 2011 Gainful Employment—Debt Measures final regulations (76 FR 34386, June 13, 2011) that 55 percent of the gainful employment programs at proprietary institutions are nondegree programs, and that 45 percent are degree programs. As described earlier, we estimate that proprietary institutions will seek to establish 540 new gainful employment nondegree programs on an annual basis. If the 540 new nondegree programs make up 55 percent of the total number of new nondegree programs at proprietary institutions, then the total number of new programs established by such institutions would be 982 (540 divided by 0.55 equals 982). Therefore, we estimate that proprietary institutions will seek to establish a total of 442 new gainful employment degree programs on an annual basis (982 minus 540 equals 442).

The sum of the number of new gainful employment nondegree programs established annually (4,085) and new gainful employment degree programs established annually (442) is 4,527. Thus, we estimate that institutions will be establishing a total of 4,527 new gainful employment programs annually.

Proposed § 600.20—Application procedures for establishing, reestablishing, maintaining, or expanding program eligibility and institutional eligibility and certification.

The proposed regulations eliminate the current notice requirements in favor of a more streamlined approach under which an institution would simply apply to establish the eligibility of certain new gainful employment programs rather than all new gainful employment programs. As a result, there will be fewer submissions for approval of new programs under these proposed regulations, as compared to the current notification requirements that apply to all new gainful employment programs.

Section 600.20(d)(2)

In proposed § 600.20(d)(2), an institution that seeks to establish the eligibility of a gainful employment program must submit an application to the Department, except as provided under § 600.10(c)(1), only if that program (1) is the same as, or substantially similar to, a failing program that was voluntarily discontinued by the institution under 34 CFR 668.7(l)(1) or a program that became ineligible for title IV, HEA program funds under 34 CFR 668.7(i), or (2) is substantially similar to a failing program designated as a failing program under 34 CFR 668.7(h) for any one of the two most recent fiscal years. For this purpose, a program is substantially similar if it has the same credential level and the same first four digits of the CIP code as that of a failing program, a failing program the institution voluntarily discontinued, or an ineligible program. The application and eligibility determination requirements are set forth in § 600.20(d)(3) and (d)(4), respectively.

Section 600.20(d)(3)

Proposed § 600.20(d)(3) specifies the information that an institution that seeks to establish the eligibility of a program that leads to gainful employment under § 600.20(d)(2) must include in its application. In this proposed regulation, we are retaining the core requirements for information to be reported about new programs under current § 600.20(d)(2)(i), (d)(2)(ii), (d)(2)(iii), and (d)(2)(iv), and we propose to augment those requirements by having the institution include the following additional information in its application: (1) A wage analysis of the new program performed by or on behalf of the institution (§ 600.20(d)(3)(v)); (2) compared to the failing or ineligible program, a description of the enhancements or modifications the institution made to improve the new program's performance under the gainful employment standards in § 668.7(a) (§ 600.20(d)(3)(vi)); and (3) the CIP code and credential level of the new program, along with a description of how the institution determined that CIP code (§ 600.20(d)(3)(vii)).

In the Gainful Employment—New Programs final regulations, we estimated that the burden associated with notifying the Department about a new gainful employment program would be an average of 2.5 hours. With respect to the application requirements under the proposed regulations, we anticipate a small additional amount of burden associated with the collection of a wage analysis of the new program under proposed § 600.20(d)(3)(v), a description of the enhancements or modifications the institution made to improve the new program's performance under proposed § 600.20(d)(3)(vi), and the requirement that an application include the CIP code, the credential level, and a description of how the institution determined the CIP code under proposed § 600.20(d)(3)(vii). As a result of these proposed changes, we expect the per unit burden for each submission to increase from an average of 2.5 hours to 3 hours per submission.

We are estimating the application burden for new gainful employment programs based upon the type of institution and the type of program. We begin this analysis by adjusting the number of programs in each group to remove the programs that are exempt from the debt measures under § 668.7(d)(2) (*i.e.,* programs with 30 or fewer borrowers or completers), because those programs cannot trigger an application requirement for an institution (the remaining programs are ones to which the debt measures apply). We then determine how many of those remaining programs will fail the debt measures at least once. We estimate that this is the number of new programs that would need to submit an application to the Secretary for approval under proposed § 600.20(d)(2).

We estimate that the number of programs that fail the debt measures at least once will be comparable to the number of new programs that are the same as or substantially similar to failing programs that an institution voluntarily discontinued or ineligible programs, or substantially similar to failing programs because we believe schools will generally aim to modify or replace programs that fail. We understand that some institutions may already have other programs that are providing better outcomes under the debt measures and therefore may not replace a program that was less successful under those measures. We also believe that some institutions may decide to focus on establishing new gainful employment programs that are not substantially similar to a program that did not perform well on the debt measures. In these cases, an institution would not be required to obtain approval of the new program under proposed § 600.20. On the other side of this equation, however, we also believe that some institutions will seek to offer new programs that are the same as or substantially similar to failing programs the institution voluntarily discontinued or were determined ineligible or substantially similar to failing programs. In these cases, an institution would be required to obtain the Secretary's approval under proposed § 600.20. On balance, we believe that for every gainful employment program that fails the debt measures at least once, there will be a new program established that will need to obtain approval under the application requirements. We are using this same estimate across all types of affected entities (proprietary institutions, private nonprofit institutions, and public institutions). The amount of burden we are estimating for each of these sectors under these proposed regulations follows.

Nondegree Programs—Proprietary Institutions. Based on the Gainful Employment—Debt Measures final regulations analysis in Table 9–A (76 FR 34386, 34474) (Table 9–A), we estimate that there are 7,213 existing gainful employment nondegree programs at proprietary institutions (13,114 total gainful employment programs times 55 percent that are nondegree programs equals 7,213 nondegree programs). Based upon the Gainful Employment—Debt Measures final regulations analysis in Table 1 (76 FR 34386, 34457) (Table 1), we project that 39.5 percent of existing nondegree programs at proprietary institutions will be exempt from the debt measures because they have 30 or fewer borrowers or completers and that the remaining 60.5 percent of the gainful employment nondegree programs will be subject to the debt measures; therefore, 4,364 nondegree programs (7,213 times 0.605 equals 4,364) will be subject to the debt measures. Table 9–A indicates that 18 percent of proprietary nondegree programs will fail or become ineligible for a total of 786 programs (4,364 times 0.18 equals 786). Therefore, for the reasons discussed previously, we estimate that proprietary institutions would apply for approval for 786 new gainful employment nondegree programs under proposed § 600.20(d). We estimate that on average, each application would take 3 hours to prepare and submit to the Department; therefore, the total amount of burden for proprietary institutions to submit applications for new gainful employment nondegree programs would equal 2,358 hours under OMB control number 1845–0012.

Nondegree Programs—Private Nonprofit Institutions.

Based on the analysis in Table 9–A, we estimate that there are 2,790 existing gainful employment nondegree programs at private nonprofit institutions (5,073 total gainful employment programs times 55 percent that are nondegree programs equals 2,790 nondegree programs). Based upon the analysis in Table 1, we project that 75.6 percent of these programs will be exempt from the debt measures because they have 30 or fewer borrowers or completers and that 24.4 percent of these programs will be subject to the debt measures. Therefore, 681 gainful employment nondegree programs at private nonprofit institutions (2,790 times 0.244 equals 681) will be subject to the debt measures. Table 9–A indicates that 5 percent of these programs will fail or become ineligible for a total of 34 programs (681 times 0.05 equals 34). Therefore, for the reasons discussed previously, we estimate that private nonprofit institutions would apply for approval for 34 new gainful employment nondegree programs under proposed § 600.20(d)(2).

We estimate that, on average, each application would take 3 hours to prepare and submit to the Department; therefore, the total burden for private nonprofit institutions to submit applications for new gainful employment nondegree would equal 102 hours under OMB control 1845–0012.

Nondegree Programs—Public Institutions.

Based upon the analysis in Table 9–A, we estimate that there are 20,470 existing gainful employment nondegree programs at public institutions (37,218 total gainful employment programs times 55 percent that are nondegree programs equals 20,470 nondegree programs). Based upon the analysis in Table 1, we project that 68.1 percent of these programs will be exempt from the debt measures because they have 30 or fewer borrowers or completers and that the remaining 31.9 percent of these programs will be subject to the debt measures; therefore, 6,530 nondegree programs at public institutions (20,470 times 0.319 equals 6,530) will be subject to the debt measures.

Table 9–A indicates that 3 percent of gainful employment nondegree programs at public institutions will fail or become ineligible for a total of 196 programs (6,530 times 0.03 equals 196). Therefore, for the reasons discussed previously, we estimate that public

institutions would apply for approval for 196 gainful employment nondegree programs under proposed § 600.20(d)(2). We estimate that, on average, each application would take 3 hours to prepare and submit to the Department; therefore, the total amount of burden for public institutions to submit applications for new gainful employment nondegree programs would equal 588 hours under OMB control number 1845–0012.

Collectively, we project that the annual burden for the submission of applications for new gainful employment nondegree programs under proposed § 600.20(d) would be 3,048 hours under OMB 1845–0012.

Degree Programs.

Based upon the analysis in Table 9–A, we estimate that there are 5,901 existing gainful employment degree programs at proprietary institutions (13,114 total gainful employment programs at proprietary institutions times 45 percent that are degree programs equals 5,901 degree programs). Based upon the analysis in Table 1, we project that 39.5 percent will be exempt from the debt measures because they have 30 or fewer borrowers or completers and that the remaining 60.5 percent of these programs will be subject to the debt measures; therefore, 3,570 degree programs (5,901 times 0.605 equals 3,570) will be subject to the debt measures.

Table 9–A indicates that 18 percent of degree programs at proprietary schools will fail or become ineligible for a total of 643 programs (3,570 times 0.18 equals 643). Therefore, for the reasons described previously, we estimate that proprietary institutions would apply for approval for 643 new gainful employment degree programs under proposed § 600.20(d)(2).

As indicated previously, given the additional items that an institution must include in its application, we have adjusted the amount of burden per submission; therefore, we estimate that the average amount of time to prepare and submit the application would increase from 1.75 hours, as described in the Gainful Employment—New Programs final regulations, to 2.25 hours per submission under these proposed regulations.

We estimate that the burden for institutions to submit individual applications for 643 new degree programs would be 1,447 hours (643 individual submissions times 2.25 hours per submission equals 1,447 hours) under OMB control number 1845–0012. Collectively, we estimate that the annual burden on proprietary institutions for gainful employment degree program submissions under proposed § 600.20(d) would be 1,447 hours under OMB control number 1845–0012.

Section 600.20(d)(4)(ii)

The proposed regulations in § 600.20(d)(4)(ii) provide that the Secretary may request additional information from an institution that has submitted an application for approval of a new program before making an eligibility determination. Therefore, we have estimated the amount of reporting burden associated with providing the additional information. As we did with our analysis of the burden under proposed § 600.20(d)(3), we provide the following sector-by-sector analysis of the burden for nondegree programs under the provisions of § 600.20(d)(4)(ii).

Nondegree Programs—Proprietary Institutions.

As noted previously, we estimate that proprietary institutions would apply for approval for 786 new gainful employment nondegree programs under proposed § 600.20(d). We further estimate that of those 786 new programs, the Secretary will request additional information for 24 percent. We estimate that for 10 percent of the applications, the request will be for minor clarifications and would likely be resolved through a phone call or e-mail to institutional staff. The additional increase in burden associated with these minor clarifications would average an additional 0.5 hours per contact for a total increase of 40 hours under OMB control number 1845–0012 (786 applications times 0.1 equals 79 requests for minor clarifications, times 0.5 hours per request equals 40 hours).

We estimate that for 14 percent of the applications, an institution would have to submit substantive additional information in response to the Secretary's request. The additional increase in burden associated with responding to a request for additional substantive information would average an additional 3 hours per request for a total increase of 330 hours under OMB control number 1845–0012 (786 applications times 0.14 equals 110 requests for substantive additional information, times 3 hours per request equals 330 hours).

Nondegree programs—Private Nonprofit Institutions.

As noted previously, we estimate that private nonprofit institutions would apply for approval for 34 new gainful employment nondegree programs under proposed § 600.20(d)(2). We further estimate that of those 34 new programs, the Secretary will request additional information for 24 percent. We estimate that for 10 percent of the applications, the request will be for minor clarifications and would likely be resolved through a phone call or e-mail to institutional staff. The additional increase in burden associated with these minor clarifications would average an additional 0.5 hours per contact for a total increase of 2 hours under OMB control number 1845–0012 (34 applications times 0.10 equals 3 requests for minor clarifications times 0.5 hours per request equals 2 hours).

We estimate that for 14 percent of the applications, an institution would have to submit substantive additional information in response to the Secretary's request. The additional increase in burden associated with responding to a request for additional substantive information would average an additional 3 hours per request for a total increase of 15 hours under OMB control number 1845–0012 (34 applications times 0.14 equals 5 requests for substantive additional information, times 3 hours per request equals 15 hours).

Nondegree Programs—Public Institutions.

As noted previously, we estimate that public institutions would apply for approval for 196 new gainful employment nondegree programs under proposed § 600.20(d)(2). We further estimate that of those 196 new programs, the Secretary will request additional information for 24 percent. We estimate that for 10 percent of the applications, the request will be for minor clarifications and would likely be resolved through a phone call or e-mail to institutional staff. The additional increase in burden associated with these minor clarifications would average an additional 0.5 hours per contact for a total increase of 10 hours under OMB control number 1845–0012 (196 applications times 0.10 equals 20 requests for minor clarifications, times 0.5 hours per request equals 10 hours).

We estimate that for 14 percent of the applications, an institution would have to submit additional substantive information in response to the Secretary's request. The additional increase in burden associated with responding to a request for additional substantive information would average an additional 3 hours per request for a total increase of 81 hours under OMB control number 1845–0012 (196 applications times 0.14 equals 27 requests for substantive additional information, times 3 hours per request equals 81 hours).

Collectively, we estimate that the annual burden hours associated with

the submission of additional information after being contacted by the Department regarding new gainful employment nondegree programs would be 478 hours under OMB control number 1845–0012.

Degree Programs.

As stated previously, we estimate that proprietary institutions would apply for approval of 643 new gainful employment degree programs under proposed § 600.20(d)(2). We further estimate that of those 643 new programs, the Secretary will request additional information for 24 percent. We estimate that for 10 percent of the applications, the request will be for minor clarifications and would likely be resolved through a phone call or e-mail to institutional staff. The additional increase in burden associated with these minor clarifications would average an additional 0.5 hours per contact for a total increase of 32 hours under OMB control number 1845–0012 (643 applications times 0.10 equals 64 requests for minor clarifications, times 0.5 hours per request equals 32 hours). We estimate that for 14 percent of the applications, an institution would have to submit substantive additional information in response to the Secretary's request. The additional increase in burden associated with responding to a request for additional substantive information request would average an additional 3 hours per request for a total increase of 270 hours under OMB control number 1845–0012 (643 applications times 0.14 equals 90 requests for substantive additional information, times 3 hours per request equals 270 hours).

Collectively, we estimate that the annual burden hours associated with the submission of additional information after being contacted by the Department regarding new degree programs would be 302 hours under OMB control number 1845–0012.

In total, the proposed regulations in § 600.20(d) would result in a reduction in burden under OMB 1845–0012 to 5,275 hours. This is because we have revised the currently approved burden of 3,591 hours under OMB 1845–0012 to 12,343 hours of burden. To attain this result, we multiplied 4,085 nondegree programs by 2.5 hours per program, which equals 10,213 hours. To this figure, we added 774 hours of burden (442 degree programs times 1.75 hours per program) for a sum of 10,987 hours of burden. To this sum we added the burden associated with the reporting of additional information for 10 percent of the 4,527 new programs (452 programs), which we estimated would be 1,356 hours (452 times 3). This results in 12,343 hours of burden. The revision was due to the use of more recent data regarding new gainful employment nondegree program applications for 2009 and 2010. Under these proposed regulations to streamline and limit the scope of affected programs, the burden associated with the application process will decrease by 7,068 hours under OMB control number 1845–0012.

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
600.20	The currently approved burden for this section has been revised based upon newer data which increases the burden from the currently approved 3,591 hours to 12,343 hours. This proposed regulatory section streamlines the application requirement for new gainful employment programs and limits the need to submit an application to new programs that are the same as or substantially similar to failing programs that are voluntarily discontinued by the institution or programs that became ineligible, or programs that are substantially similar to a failing program. The proposed regulations also require institutions to provide additional information about a new program when requested by the Secretary.	OMB 1845–0012. The burden has been revised from 3,591 hours to 12,343 hours based upon new nondegree program applications received in 2009 and 2010. These proposed regulations would result in a decrease in burden to 5,275 hours, a decrease of 7,068 hours.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. You may also view this document in text or PDF at the following site: *http://www2.ed.gov/about/offices/list/ope/policy.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grant (ACG); 84.376 National Science and Mathematics Access to Retain Talent (National SMART); 84.379 TEACH Grant Program)

List of Subjects in 34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: September 20, 2011.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 600 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

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

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

2. Section 600.2 is amended by adding, in alphabetical order, the definition of ''*Classification of instructional programs or CIP*'' to read as follows:

§ 600.2 Definitions.

* * * * *

Classification of instructional programs or CIP: A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics.

* * * * *

3. Section 600.10 is amended by:

A. Revising paragraph (c)(1).

B. Removing paragraph (c)(2).

C. Redesignating paragraph (c)(3) as paragraph (c)(2).

The revision reads as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) *New educational programs.* (1) An eligible institution that seeks to establish the eligibility of an educational program after it has been designated as an eligible institution by the Secretary does not have to apply to the Secretary to have that program approved unless—

(i) The institution is required to obtain the Secretary's approval under the provisions in § 600.20(c)(2), § 600.20(d)(2), 34 CFR 668.10(b), 34 CFR 668.14(a)(1), or 34 CFR 668.232; or

(ii) The Secretary notifies the institution that it must apply for approval.

* * * * *

4. Section 600.20 is amended by:

A. Revising the section heading.

B. Revising paragraph (d).

The revisions read as follows:

§ 600.20 Application procedures for establishing, reestablishing, maintaining, or expanding program eligibility or institutional eligibility and certification.

* * * * *

(d) *Application requirements.* (1) *General.* To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must submit an application to the Secretary in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(2) *Gainful employment programs.* (i) Except as provided under § 600.10(c)(1), an institution that seeks to establish the eligibility of a program that leads to gainful employment, as described under 34 CFR 668.7(a)(2)(i), must apply to the Secretary only if the program is—

(A) The same as, or substantially similar to, a program that—

(*1*) Was a failing program that was voluntarily discontinued by the institution under 34 CFR 668.7(l)(1); or

(*2*) Became ineligible for title IV, HEA program funds under 34 CFR 668.7(i); or

(B) Substantially similar to a program designated as a failing program under 34 CFR 668.7(h) for any one of the two most recent fiscal years.

(ii) For the purposes of this section, a program is substantially similar if it has the same credential level and the same first four digits of the CIP code as that of a failing program, a failing program the institution voluntarily discontinued, or an ineligible program.

(iii) An institution that submits an application for a gainful employment program must obtain the Secretary's approval before providing title IV, HEA program funds to students enrolled in the program. However, an institution may not apply to reestablish the eligibility of a failing program that was voluntarily discontinued by the institution, or a program that is the same as or substantially similar to an ineligible program, until the ineligibility period for that program has expired, as provided under 34 CFR 668.7(l)(2).

(3) *Application.* An institution that seeks to establish the eligibility of a program that leads to gainful employment under paragraph (d)(2) of this section must include in its application—

(i) A description of how the institution determined the need for the new gainful employment program and how the program was designed to meet local market needs, or for an online program, regional or national market needs;

(ii) A description of how the new program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program;

(iii) Documentation that the new program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;

(iv) The date of the first day of class of the new program.

(v) A wage analysis of the new program performed by or on behalf of the institution. The wage analysis must include supporting documentation based on the best data that is reasonably available to the institution;

(vi) Compared to the failing or ineligible program, a description of the enhancements or modifications the institution made to improve the new program's performance under the gainful employment standards in 34 CFR 668.7(a); and

(vii) The CIP code and credential level of the new program, along with a description of how the institution determined that CIP code.

(4) *Eligibility determination.* (i) In determining whether to approve the eligibility of a new gainful employment program, the Secretary takes into account—

(A) The institution's demonstrated financial responsibility and administrative capability in operating its existing programs;

(B) Based on the information provided by the institution under paragraph (d)(3) of this section, whether the processes used and determinations made by the institution to offer the program are sufficient; and

(C) The performance under 34 CFR 668.7 of the institution's other gainful employment programs.

(ii) The Secretary may request additional information from the institution before making an eligibility determination.

(iii) If the Secretary denies the institution's eligibility for a new gainful employment program, the Secretary informs the institution of the reasons for the denial. The institution may request that the Secretary reconsider the determination.

* * * * *

[FR Doc. 2011–24454 Filed 9–26–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Tuesday,

No. 187 September 27, 2011

Part VI

The President

Proclamation 8719—National Public Lands Day, 2011

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Vol. 76, No. 187
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Presidential Documents

Title 3—

The President

Proclamation 8719 of September 22, 2011

National Public Lands Day, 2011

By the President of the United States of America

A Proclamation

At the dawn of the 20th century, President Theodore Roosevelt embarked on a tour of the American West that forever changed our Nation's relationship with the outdoors. His visits to Yellowstone, Yosemite, the Grand Canyon, and other natural wonders instilled in him a commitment to conservation, and they motivated him to designate millions of acres of protected land. Today, our public lands system is a model of conservation and an important resource for clean energy, grazing, and recreation—vital economic engines in both rural and urban communities.

On National Public Lands Day, we take time to appreciate our parks, national forests, wildlife refuges, and other public spaces, and we recommit to protecting and restoring them for future generations. This year, thousands of dedicated volunteers will continue a proud American tradition by conserving and restoring our public lands with local projects across our Nation. Americans will restore hiking trails, remove invasive plant species, clean lakes, and pick up litter in city parks. Through their service, families and children will find opportunities for outdoor activity on the millions of acres of national forests, parks, and trails.

To maintain our environmental heritage and build a responsive conservation and recreation agenda, my Administration launched the America's Great Outdoors Initiative last year. We met with thousands of Americans in listening sessions across our country, and compiled the results of this national conversation in the report, *America's Great Outdoors: A Promise to Future Generations*. To act on these findings, we are undertaking projects in collaboration with State, local, and tribal governments to responsibly steward the lands that belong to all Americans. First Lady Michelle Obama also joined in support of getting Americans outside when the *Let's Move!* initiative, in coordination with the Department of the Interior, launched *Let's Move Outside!* to help families exercise in the great outdoors.

Countless Americans have experienced the same awe and wonder that President Roosevelt felt on his westward journey. By joining in this legacy of conservation, Americans young and old protect not only our lands, but also the promise that future generations will be able to carry forward the spirit of adventure that lies at the heart of our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 24, 2011, as National Public Lands Day. I encourage all Americans to participate in a day of public service for our lands.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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S. 846/P.L. 112–31
To designate the United States courthouse located at 80 Lafayette Street in Jefferson City, Missouri, as the Christopher S. Bond United States Courthouse. (Sept. 23, 2011; 125 Stat. 360)

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