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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1066]

Drawbridge Operation Regulation; Sacramento River, Paintersville, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Paintersville Drawbridge across Sacramento River, mile 33.4, at Paintersville, CA. The deviation is necessary to allow California Department of Transportation to paint and perform routine maintenance on the drawbridge. This deviation allows single leaf operation of the double leaf bascule style drawbridge during the project.

DATES: This deviation is effective from 7 a.m., January 6, 2012 to 6 p.m. on April 4, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–1066 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1066 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Paintersville Drawbridge, mile 33.4, over Sacramento River, at Paintersville, CA. The drawbridge navigation span provides a vertical clearance of 24 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

Either leaf of the double bascule drawspan may be secured in the closed-to-navigation position from 7 a.m., January 6, 2012 to 6 p.m. on April 4, 2012, to allow Caltrans to conduct painting and maintenance on the bridge. The opposite leaf will continue to operate normally, providing unlimited vertical clearance and 77 feet horizontal clearance between leafs. A work platform will be installed below the secured leaf, reducing vertical clearance by 6 feet. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary deviation were raised.

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

Dated: December 9, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–33769 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1028]

Drawbridge Operation Regulation; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Florida East Coast automated railroad bridge across the St. Johns River, mile 24.9, in Jacksonville, Florida. The regulation is set forth in 33 CFR 117.325(b). The deviation is necessary to enable the bridge owner to repair the bridge. This deviation will result in the bridge remaining closed to navigation during extensive periods of daylight hours.

DATES: This deviation is effective from 8 a.m. on January 15, 2012 through 5 p.m. on March 29, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1028 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1028 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Michael Lieberum, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6744, email *Michael.B.Lieberum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The bridge owner has determined that extensive repairs are required on the Florida East Coast automated railroad bridge over the St. Johns River in Jacksonville, Florida. This temporary deviation will enable

the bridge owner to make necessary repairs to the bridge. The bridge provides a vertical clearance of 5 feet above mean high water in the closed position and a horizontal clearance of 195 feet.

The normal operating schedule for the bridge is set forth in 33 CFR 117.325(b). 33 CFR 117.325(b) states that the draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. When a train approaches, large signs on both the upstream and downstream sides of the bridge flash ''Bridge Coming Down,'' the lights go to flashing red, and siren signals sound. After an eight minute delay, the draw lowers and locks if there are no vessels under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. After the train has cleared, the draw opens and the lights return to flashing green.

The deviation will be in effect from 8 a.m. on January 15, 2012 through 5 p.m. on March 29, 2012. As a result of this deviation, the Florida East Coast automated railroad bridge over the St. Johns River will remain closed to navigation from 8 a.m. until 11:30 a.m. and from 12:30 p.m. until 5 p.m. Sundays through Thursdays from 8 a.m. on January 15, 2012 through 5 p.m. on March 29, 2012. This deviation will affect all vessel traffic transiting under the bridge. Vessels may not pass underneath the bridge in closed position, and there are no alternate routes for vessel traffic. Due to the nature of the repair work, it would take a minimum of two hours to open in an emergency as the bridge would have to be rebalanced before it could open.

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

Dated: December 22, 2011.

W.D. Baumgartner,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2011–33819 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1139]

Drawbridge Operation Regulation; Corson Inlet, Stathmere, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Corson Inlet Bridge (County Route 619), across Corson Inlet, mile 0.9 in Strathmere, NJ. The deviation is necessary to facilitate the replacement of the steel railing. This deviation restricts operation of the draw span; no openings will be allowed during the course of the project, while the railings on the moveable span portion of the bridge are replaced.

DATES: This deviation is effective from 5 a.m. on January 15, 2012 until 5 p.m. on February 15, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1139 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1139 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone (757) 398–6587, email *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Cape May County Bridge Commission, who owns and operates this bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.714 to facilitate the replacement of the bridge railings.

Under the regular operating schedule, the bridge operates as follows: The draw shall open on signal; however, from October 1 through May 15 from 10 p.m. to 6 a.m. and from 6 a.m. to 10 p.m. on December 25 the draw need open only if at least two hours notice is provided.

The Corson Inlet Bridge (CR–619) at mile 0.9, across Corson Inlet in Strathmere, NJ has a vertical clearance in the closed position to vessels of 15 feet above mean high water (MHW).

Under this temporary deviation, the Corson Inlet Bridge will be closed to vessels requiring an opening, from 5 a.m. on January 15, 2012 to 5 p.m. on February 15, 2012. The drawbridge will not be able to open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Vessels have an alternate ocean route to the south through Townsends Inlet.

Though the span will be closed for the project, the 15 feet of vertical navigation clearance will remain available throughout the project. Furthermore, the 50 feet of horizontal clearance will be reduced to 25 feet temporarily only if/when barges are used beneath the span to facilitate this project.

Historically, there were no vessel openings provided for the months of January through February in 2011. The Coast Guard has coordinated the restrictions with the Cape May County Bridge Commission/contractor and will inform the other users of the waterways through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 22, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2011–33824 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1132]

RIN 1625–AA09

Drawbridge Operation Regulation; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the Smith Point Bridge, mile 6.1, across Narrow Bay, between Smith Point and Fire Island, New York. This temporary final rule is necessary to facilitate the completion of a major bridge rehabilitation project.

DATES: This temporary final rule is effective from January 5, 2012, through May 25, 2012. The rule has been enforced with actual notice since December 22, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–1132 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1132 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7165, *judy.k.leung-yee@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)).

This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest to give prior notice and opportunity for comment. As is more fully discussed below, the rehabilitation work has already begun on this bridge under a temporary deviation published on September 30, 2011, (76 FR 60733) and that work was unexpectedly delayed. This rule provides a time extension so that the rehabilitation can be completed in the shortest possible time frame. Without this rule the work would have to be suspended thereby delaying the ultimate completion date. Further, as stated in the temporary deviation this waterway is used primarily by recreational boaters who can safely pass through the reduced horizontal clearance caused by this rule, the majority of whom do not operate during the months when this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the reasons stated above.

Basis and Purpose

The Smith Point Bridge across Narrow Bay, mile 6.1, between Smith Point and Fire Island, New York, has a vertical clearance in the closed position of 16 feet at mean high water and 18 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(d).

The waterway users are predominantly recreational vessels of various sizes.

On September 30, 2011, the Coast Guard published a temporary deviation (76 FR 60733) from the regulations allowing single span bridge openings from September 26, 2011 through December 21, 2011, in order to facilitate bridge rehabilitation construction at Smith Point Bridge. Under the temporary deviation the bridge was allowed to open only one of the two moveable spans for the passage of vessels from September 26, 2011, through December 21, 2011.

The bridge owner, Suffolk County Department of Public Works, recently advised the Coast Guard that the cleaning and painting operations delayed the structural steel repairs and requested an extension of 156 days to complete the rehabilitation project necessary to allow the bridge to return to its full two span operation. The Coast Guard expects minimal marine traffic transit through this bridge during the proposed effective dates of this rule, and all vessels known to use this waterway can pass through the bridge with a single span opening.

As a result, the Coast Guard is publishing this temporary final rule to help facilitate completion of the bridge rehabilitation before the 2012 boating season begins.

Discussion of Rule

The Coast Guard is publishing this temporary final rule, extending single span openings from December 22, 2011 through May 25, 2012, to help facilitate completion of bridge rehabilitation repairs. The rehabilitation repairs must be completed before the bridge can open both spans for the passage of vessel traffic for the 2012 boating season.

The main navigation channel provides 55 feet of horizontal clearance with unobstructed vertical clearance during a bridge opening.

During this temporary final rule the main channel will provide 27.5 feet of horizontal clearance with unobstructed vertical clearance during a bridge opening.

The Coast Guard believes that this temporary final rule should meet the reasonable needs of navigation because the vessels that normally use this bridge are recreational vessels that can safely pass through a 27.5 foot horizontal clearance due to their relative small size. In addition, most of the above recreational vessels do not operate during the months when this rule will be in effect.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons. The bridge presently cannot open two spans for vessel traffic due to the fact that

rehabilitation repairs have not been completed. This action will facilitate completion of the bridge repairs. Most vessel traffic that uses this waterway can fit through the bridge with a single span opening.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the bridge that cannot transit through a 27.5 foot horizontal clearance. The bridge presently cannot open two spans for the passage of vessel traffic because the rehabilitation repairs are not completed. This action will facilitate completion of the bridge repairs. Most vessel traffic that uses this waterway can fit through the bridge with a single span opening.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In Sec. 117.799, paragraph (d) is suspended and paragraph (k) is added to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(k) The draws of the West Bay Bridge, mile 0.0, across Quantuck Canal, Beach Lane Bridge, mile 1.1, across Quantuck Canal, and the Quoque Bridge, mile 1.1, across Quoque Canal, shall open on signal from October 1 through April 30 from 8 a.m. to 4 p.m. and from May 1 through September 30, from 6 a.m. to 10 p.m. The draw of the Smith Point Bridge, mile 6.1, across Narrow Bay, need open only one of the two movable spans for the passage of vessel traffic from December 22, 2011 through May 25, 2012. The draw shall open on signal from December 22 through April 30 from 8 a.m. to 4 p.m. and from May 1 through May 25, 6 a.m. through 10 p.m. At all other times during these periods, the draws shall open as soon as possible but no more than one hour after a request to open is received.

Dated: December 21, 2011.

James B. McPherson,

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

[FR Doc. 2011–33832 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1134]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the S.R. 74 Bridge across the AIWW, mile 283.1, at Wrightsville Beach, NC. The deviation restricts the operation of the draw span to facilitate the structural repair of the bridge.

DATES: This deviation is effective from 7 p.m. on January 3, 2012 until 7 a.m. on March 15, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2011–1134 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1134 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation, who owns and operates this bascule-lift type bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.821(a)(4), to facilitate the structural repair of the bridge.

The S.R. 74 Bridge across the AIWW mile 283.1, at Wrightsville Beach, NC has a vertical clearance in the closed position of 20 feet, above mean high water.

Under the regular operating schedule, the drawbridge shall open on signal for commercial vessels at all times; and on signal for pleasure vessels except between 7 a.m. and 7 p.m. when the drawbridge need only open on the hour.

Under this temporary deviation, the structural repairs will restrict the operation of the draw span to the closed-to-navigation position, each day from 7 p.m. to 7 a.m., beginning on Tuesday, January 3, 2012 and ending on Thursday, March 15, 2012; except vessel openings will be provided with at least two hours advance notice given to the bridge operator. Each day between 7 a.m. and 7 p.m., the drawbridge will continue to operate as set out in 33 CFR 117.821(a).

Vessels may transit under the drawbridge while it is in the closed position. The Atlantic Intracoastal Waterway serves a variety of vessels from tug and barge traffic to recreational vessels traveling from Florida to Maine. The Coast Guard will inform unexpected users of the waterway through our local and broadcast Notices to Mariners of the limited operating schedule for the drawbridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. In 2011, from January thru March, 7 p.m. to 7 a.m., this draw opened approximately 35 times per month. The Atlantic Ocean is the alternate route for vessels and the bridge will be able to open in the event of an emergency.

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

Dated: December 30 2011.

W.D. Lee,

Rear Admiral, District Commander, Fifth Coast Guard District.

[FR Doc. 2012–51 Filed 1–3–12; 4:15 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified

BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B-1211).	City of Orange Beach (11–04–4328P).	June 22, 2011; June 29, 2011; *The Islander.*	The Honorable Tony Kennon, Mayor, City of Orange Beach, 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	June 14, 2011	015011
Madison (FEMA Docket No.: B-1211).	City of Huntsville (10–04–7862P).	June 22, 2011; June 29, 2011; *The Huntsville Times.*	The Honorable Tommy Battle, Mayor, City of Huntsville, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	October 27, 2011	010153
Arizona:					
Maricopa (FEMA Docket No.: B-1206).	City of Peoria (11–09–0647P).	June 2, 2011; June 9, 2011; *The Arizona Business Gazette.*	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	October 7, 2011	040050
Maricopa (FEMA Docket No.: B-1206).	Unincorporated areas of Maricopa County (11–09–0647P).	June 2, 2011; June 9, 2011; *The Arizona Business Gazette.*	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 7, 2011	040037
Navajo (FEMA Docket No.: B-1206).	Town of Snowflake (10–09–1783P).	May 27, 2011; June 3, 2011; *The White Mountain Independent.*	The Honorable Kelly Willis, Mayor, Town of Snowflake, 81 West 1st South, Snowflake, AZ 85937.	October 3, 2011	040070
California:					
Shasta (FEMA Docket No.: B-1206).	Unincorporated areas of Shasta County (10–09–3227P).	June 1, 2011; June 8, 2011; *The Red Bluff Daily News.*	The Honorable Les Baugh, Chairman, Shasta County Board of Supervisors, 1450 Court Street, Suite 308B, Redding, CA 96001.	October 6, 2011	060358
Tehama (FEMA Docket No.: B-1206).	Unincorporated areas of Tehama County (10–09–3227P).	June 1, 2011; June 8, 2011; *The Anderson Valley Post.*	The Honorable Gregg Avilla, Chairman, Tehama County Board of Supervisors, 727 Oak Street, Red Bluff, CA 96080.	October 6, 2011	065064
Colorado: Douglas (FEMA Docket No.: B-1219).	Unincorporated areas of Douglas County (11–08–0044P).	July 7, 2011; July 14, 2011; *The Douglas County News-Press.*	The Honorable Jill Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	June 30, 2011	080049
Kentucky: Fayette (FEMA Docket No.: B-1211).	Lexington-Fayette Urban County Government (11–04–0368P).	June 22, 2011; June 29, 2011; *The Lexington Herald-Leader.*	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	October 27, 2011	210067
Nevada: Clark (FEMA Docket No.: B-1211).	City of Las Vegas (11–09–1593P).	June 23, 2011; June 30, 2011; *The Las Vegas Review-Journal.*	The Honorable Oscar B. Goodman, Mayor, City of Las Vegas, 400 Stewart Avenue, Las Vegas, NV 89101.	June 16, 2011	325276

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina:					
Alamance (FEMA Docket No.: B-1206).	City of Burlington (10–04–4375P).	May 6, 2011; May 13, 2011; *The Times-News*.	The Honorable Ronnie K. Wall, Mayor, City of Burlington, 425 South Lexington Avenue, Burlington, NC 27216.	September 12, 2011	370002
Alamance (FEMA Docket No.: B-1206).	Town of Elon (10–04–4375P).	May 6, 2011; May 13, 2011; *The Times-News*.	The Honorable Jerry R. Tolley, Mayor, Town of Elon, 104 South Williamson Avenue, Elon, NC 27244.	September 12, 2011	370411
Buncombe (FEMA Docket No.: B-1206).	Unincorporated areas of Buncombe County (10–04–2274P).	May 13, 2011; May 20, 2011; *The Asheville Citizen-Times*.	Ms. Wanda Greene, Buncombe County Manager, 205 College Street, Suite 300, Asheville, NC 28801.	September 19, 2011	370031
Davidson (FEMA Docket No.: B-1206).	Unincorporated areas of Davidson County (10–04–3473P).	May 6, 2011; May 13, 2011; *The High Point Enterprise*.	Mr. Robert Hyatt Davidson, County Manager, 913 Greensboro Street, Lexington, NC 27292.	September 12, 2011	370307
Guilford (FEMA Docket No.: B-1206).	City of High Point (10–04–3473P).	May 6, 2011; May 13, 2011; *The High Point Enterprise*.	The Honorable Rebecca R. Smothers, Mayor, City of High Point, 211 South Hamilton Street, High Point, NC 27261.	September 12, 2011	370113
Madison (FEMA Docket No.: B-1206).	Unincorporated areas of Madison County (10–04–8485P).	March 30, 2011; April 6, 2011; *The News-Record & Sentinel*.	Mr. Steve Garrison, Madison County Manager, 2 North Main Street, Marshall, NC 28753.	August 4, 2011	370152
Union (FEMA Docket No.: B-1209).	Unincorporated areas of Union County (11–04–1541P).	June 2, 2011; June 9, 2011; *The Charlotte Observer* and *The Enquirer-Journal*.	Ms. Cynthia Coto, Union County Manager, Union County Government Center, 500 North Main Street, Room 918, Monroe, NC 28112.	October 7, 2011	370234
Union (FEMA Docket No.: B-1209).	Village of Marvin (11–04–1541P).	June 2, 2011; June 9, 2011; *The Charlotte Observer* and *The Enquirer-Journal*.	The Honorable Nick Dispenziere, Mayor, Village of Marvin, 10004 New Town Road, Marvin, NC 28173.	October 7, 2011	370514

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 20, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–33772 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1235]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental

impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin	City of Gulf Shores (11–04–5389P).	October 7, 2011; October 14, 2011; *The Islander.*	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, 1905 West 1st Street, Gulf Shores, AL 36547.	September 29, 2011	015005
Baldwin	City of Gulf Shores (11–04–6730P).	October 11, 2011; October 18, 2011; *The Islander.*	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, 1905 West 1st Street, Gulf Shores, AL 36547.	October 4, 2011	015005
Madison	City of Huntsville (11–04–3252P).	September 8, 2011; September 15, 2011; *The Huntsville Times.*	The Honorable Tommy Battle, Mayor, City of Huntsville, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	January 13, 2012	010153
Mobile	Unincorporated areas of Mobile County (11–04–1739P).	October 27, 2011; November 3, 2011; *The Press-Register.*	The Honorable Merceria Ludgood, Chair, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	March 2, 2012	015008
California:					
Butte	Unincorporated areas of Butte County (11–09–3448P).	October 7, 2011; October 14, 2011; *The Chico Enterprise-Record.*	The Honorable Steve Lambert, Chairman, Butte County Board of Supervisors, 3159 Nelson Avenue, Oroville, CA 95965.	February 13, 2012	060017
Napa	City of Napa (11–09–3313P).	October 14, 2011; October 21, 2011; *The Napa Valley Register.*	The Honorable Jill Techel, Mayor, City of Napa, 955 School Street, Napa, CA 94559.	February 20, 2012	060207
Napa	Unincorporated areas of Napa County (11–09–3313P).	October 14, 2011; October 21, 2011; *The Napa Valley Register.*	The Honorable Bill Dodd, Chairman, Napa County Board of Supervisors, 1195 3rd Street, Suite 310, Napa, CA 94559.	February 20, 2012	060205
San Mateo	City of San Carlos (11–09–1259P).	October 7, 2011; October 14, 2011; *The San Mateo Daily Journal.*	The Honorable Andy Klein, Mayor, City of San Carlos, 600 Elm Street, San Carlos, CA 94070.	February 13, 2012	060327
Solano	City of Fairfield (11–09–1570P).	October 20, 2011; October 27, 2011; *The Daily Republic.*	The Honorable Harry T. Price, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, CA 94533.	February 24, 2012	060370
Colorado:					
Adams	City of Commerce City (10–08–1048P).	October 25, 2011; November 1, 2011; *The Commerce City Sentinel Express.*	The Honorable Paul Natale, Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	March 2, 2012	080006
Adams & Arapahoe.	City of Aurora (11–08–0699P).	October 6, 2011; October 13, 2011; *The Aurora Sentinel.*	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	February 10, 2012	080002
Florida:					
Broward	City of Deerfield Beach (11–04–7254P).	October 6, 2011; October 13, 2011; *The Sun-Sentinel.*	The Honorable Peggy Noland, Mayor, City of Deerfield Beach, 150 Northeast 2nd Avenue, Deerfield Beach, FL 33441.	September 29, 2011	125101
St. Johns	Unincorporated areas of St. Johns County (11–04–4627P).	October 5, 2011; October 12, 2011; *The St. Augustine Record.*	The Honorable Joseph Bryan. Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	February 9, 2012	125147
Seminole	City of Altamonte Springs (11–04–7292P).	October 27, 2011; November 3, 2011; *The Orlando Sentinel.*	The Honorable Patricia Bates, Mayor, City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, FL 32701.	October 20, 2011	120290
Seminole	Unincorporated areas of Seminole County (11–04–7523P).	October 27, 2011; November 3, 2011; *The Orlando Sentinel.*	The Honorable Brenda Carey, Chair, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	October 20, 2011	120289
Georgia:					
Columbia	Unincorporated areas of Columbia County (11–04–5127P).	November 2, 2011; November 9, 2011; *The Columbia County News-Times.*	The Honorable Ron C. Ross, Chairman, Columbia County Board of Commissioners, 630 Ronald Reagan Drive Building B, 2nd Floor, Evans, GA 30809.	October 27, 2011	130059

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Liberty	City of Hinesville (11–04–0768P).	September 30, 2011; October 7, 2011; *The Coastal Courier*.	The Honorable James Thomas, Jr., Mayor, City of Hinesville, 115 East Martin Luther King, Jr. Drive, Hinesville, GA 31313.	September 26, 2011	130125
Liberty	Unincorporated areas of Liberty County (11–04–0768P).	September 30, 2011; October 7, 2011; *The Coastal Courier*.	The Honorable John D. McIver, Chairman, Liberty County Board of Commissioners, 112 North Main Street, Hinesville, GA 31310.	September 26, 2011	130123
Mississippi: DeSoto	City of Olive Branch (11–04–4496P).	October 27, 2011; November 3, 2011; *The DeSoto Times-Tribune*.	The Honorable Sam Rikard, Mayor, City of Olive Branch, 9200 Pigeon Roost Road, Olive Branch, MS 38654.	March 2, 2012	280286
Nevada:					
Clark	City of Henderson (11–09–3801P).	October 6, 2011; October 13, 2011; *The Las Vegas Review-Journal*.	The Honorable Andy A. Hafen, Mayor, City of Henderson, 240 Water Street, Henderson, NV 89015.	February 10, 2012	320005
Clark	Unincorporated areas of Clark County (11–09–3801P).	October 6, 2011; October 13, 2011; *The Las Vegas Review-Journal*.	The Honorable Susan Brager, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	February 10, 2012	320003
Utah: Box Elder	City of Willard (11–08–0207P).	September 28, 2011; October 5, 2011; *The Box Elder News Journal*.	The Honorable Ken Braegger, Mayor, City of Willard, 80 West 50 South, Willard, UT 84340.	February 2, 2012	490011
Wyoming:					
Campbell	City of Gillette (11–08–0780P).	October 18, 2011; October 25, 2011; *The News-Record*.	The Honorable Tom Murphy, Mayor, City of Gillette, 201 East 5th Street, Gillette, WY 82717.	February 22, 2012	560007
Campbell	Unincorporated areas of Campbell County (11–08–0780P).	October 18, 2011; October 25, 2011; *The News-Record*.	The Honorable Stephen F. Hughes, Chairman, Campbell County Board of Commissioners, 500 South Gillette Avenue, Suite 1100, Gillette, WY 82717.	February 22, 2012	560081

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 20, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–33773 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–12–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[EPA–HQ–OARM–2010–0764; FRL–9616–2]

EPAAR Clause for Compliance With EPA Policies for Information Resources Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA will amend the EPA Acquisition Regulation (EPAAR) to revise the content of a clause that addresses compliance policies for information resources management in contracts. This revision incorporates to the EPAAR, administrative changes to update terminology and Web site links related to EPA policies for information resources management.

DATES: This final rule is January 20, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2010–0764. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 electronically through *www.regulations.gov* or in hard copy at the Office of Environmental (OEI) Information Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Donna S. Blanding, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–1130; fax number: (202) 565–2475; email address: *blanding.donna@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include firms that are performing or will perform under contract for the EPA. This includes firms in all industry groups.

II. Background

In May, 2010 during the review of clause 1552.211–79 the EPA Office of Environmental Information (OEI), the Office of Acquisition Management (OAM) and other offices found information within this clause to be outdated. The administrative updates to the clause will bring it in line with current EPA policy.

III. Final Rule

This rule amends the EPAAR to revise the clause 1552.211–79, Compliance with EPA Policies for Information Resources Management. The proposed rule was published on May 6, 2011. No Comments were received.

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 (EO)12866 (58 FR 51735, October 4, 1993) and E.O. 13563 (76 FR 3821, January 21, 2011). Therefore, no review is required by the

Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act 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 impact of today's final rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified 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 this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR clause and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule on Compliance with EPA Policies for Information Resources Management provides updates to outdated information currently in the clause, these changes are administrative. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and Local governments, EPA specifically solicited comments from State and Local officials on this rule and no comments were received.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. This rule on EPA's Policies for Information Resources Management provides guidance on the interaction between contracting officials and contractors only. This Executive Order 13175 does not apply to this rule. EPA solicited comments on this rule and no comments were received from tribal officials.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use'' (66 FR 28335 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104–113, 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. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA 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. This rulemaking does not involve human health or environmental affects.

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, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 48 CFR Part 1552

Environmental protection, Government procurement.

Dated: November 18, 2011.

John R. Bashista,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 1552 is amended as set forth below:

PART 1552—DESCRIBING AGENCY NEEDS

■ 1. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 2. Revise 1552.211–79 to read as follows:

1552.211–79 Compliance With EPA Policies for Information Resources Management.

As prescribed in 1511.011–79, insert the following clause:

Compliance with EPA Policies for Information Resources Management

(a) *Definition.* Information Resources Management (IRM) is defined as any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both information itself and the management of information and related resources such as personnel, equipment, funds, and technology. Examples of these services include but are not limited to the following:

(1) The acquisition, creation, or modification of a computer program or automated data base for delivery to EPA or use by EPA or contractors operating EPA programs.

(2) The analysis of requirements for, study of the feasibility of, evaluation of alternatives for, or design and development of a computer program or automated data base for use by EPA or contractors operating EPA programs.

(3) Services that provide EPA personnel access to or use of computer or word processing equipment, software, or related services.

(4) Services that provide EPA personnel access to or use of: Data communications; electronic messaging services or capabilities; electronic bulletin boards, or other forms of electronic information dissemination; electronic record-keeping; or any other automated information services.

(b) *General.* The Contractor shall perform any IRM-related work under this contract in accordance with the IRM policies, standards, and procedures set forth on the Office of Environmental Information policy Web site. Upon receipt of a work request (*i.e.* delivery order, task order, or work assignment), the Contractor shall check this listing of directives. The applicable directives for performance of the work request are those in effect on the date of issuance of the work request. The 2100 Series (2100–2199) of the Agency's Directive System contains the majority of the Agency's IRM policies, standards, and procedures.

(c) *Section 508 requirements.* Contract deliverables are required to be compliant with Section 508 requirements. The Environmental Protection Agency policy for 508 compliance can be found on the Agency's Directive System identified in section (d) of this clause under policy number CIO 2130.0, Accessible Electronic and Information Technology. Additional information on Section 508 including EPA's 508 policy can be found at *www.epa.gov/accessibility.*

(d) *Electronic access.* A complete listing, including full text, of documents included in the 2100 Series of the Agency's Directive System is maintained on the EPA Public Access Server on the Internet at *http://epa.gov/docs/irmpoli8/.*

[FR Doc. 2011–33844 Filed 1–4–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2011–0315; Notice No. 11–13]

Clarification and Further Guidance on the Fireworks Approvals Policy

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Clarification.

SUMMARY: This clarification provides further guidance on PHMSA's policy that it will only accept fireworks approvals applications from fireworks manufacturers or their designated agents and grant approvals only to manufacturers of fireworks devices. This clarification and additional guidance follows the issuance of Docket No. PHMSA–2010–0353; Notice 10–9, published on June 29, 2011.

DATES: The policy clarification discussed in this document is effective January 5, 2012.

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.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document provides clarification and further guidance on PHMSA's Office of Hazardous Materials Safety (OHMS), Clarification of the Fireworks Approval Policy published on June 29, 2011 (76 FR 38053). Specifically, this document provides clarification and additional guidance on how we intend to implement our policy with respect to: (1) EX classification approvals with expiration dates; (2) applications from non-manufacturers that seek to add new item names to existing EX classification approvals; and (3) applications from non-manufacturers that were denied prior to June 29, 2011.

In addition to addressing questions as to how we intend to implement our earlier policy clarification, this document clarifies our policy regarding the transfer of EX classification approvals.

II. Background

The transportation of an explosive (fireworks device) requires an EX classification approval issued by PHMSA, commonly referred to as an EX number. The EX number is a unique

identifier that indicates the device has been classed and approved for transportation in the U.S., and is specific to a particular device as specified in 49 CFR 173.56(j) and the American Pyrotechnic Association (APA) Standard 87–1.

PHMSA understands that it is a common industry practice for fireworks devices produced by one manufacturer to be marketed and sold under different trade names. Further, in the past, each retailer, importer or distributor, in addition to the manufacturer, applied for and received an EX classification approval for the identical fireworks device. This practice resulted in PHMSA processing multiple applications and issuing multiple approvals for the same fireworks device. This redundant and burdensome process did not promote the safe transportation of explosives (fireworks devices); instead, it impeded the conduct of business for both the fireworks industry and PHMSA.

On June 29, 2011, we issued a clarification of our policy to issue fireworks classification approvals only to fireworks manufacturers, and accept fireworks classification applications only from fireworks manufacturers or their U.S. designated agents. This policy clarification was intended to restate the requirements of the Hazardous Materials Regulations (HMR), enhance safety by ensuring accountability of manufacturing, and reducing the number of duplicate applications and EX classification approvals being issued for identical fireworks devices.

Since the policy clarification was issued, we have received questions about how we intend to implement it with respect to: (1) EX classification approvals with expiration dates; (2) applications from non-manufacturers that seek to add new item names to existing EX classification approvals; and (3) applications from non-manufacturers that were denied prior to June 29, 2011.

We have also received questions about our policy regarding the transfer of EX classification approvals, which was not addressed in the prior clarification notice.

To address these questions regarding our fireworks approvals policy, we are providing the following clarification and additional guidance.

III. EX Classification Approvals With Expiration Dates

After June 29, 2011, only a manufacturer that holds a valid EX classification approval may reapply to have the EX number renewed. Regardless of who originally applied for the approval, to renew the EX classification approval, the manufacturer or its designated agent must be the entity who submits an application for renewal and all supporting documentation to *fireworks@dot.gov.* The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87–1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3).

All EX approvals with expiration dates held by non-manufacturers will expire as follows: Fireworks EX approvals expiring January 1, 2012 through December 31, 2012 will expire two years from the date indicated in the approval. For example, a fireworks EX approval expiring on January 1, 2012 will be extended until January 1, 2014. A revised EX classification approval will be automatically sent to the approval holder on record with the new expiration date. After December 31, 2014, the manufacturer or its designated agent must submit the application for renewal and all supporting documentation to *fireworks@dot.gov.* The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87–1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3).

Fireworks EX classification approvals expiring January 1, 2013 through December 31, 2015 will expire on the date noted in the EX approval and will not be extended. The manufacturer or its designated agent must submit an application for renewal and all supporting documentation to *fireworks@dot.gov.* The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87–1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3). For example, a fireworks EX Approval expiring on March 22, 2014 will expire on March 22, 2014.

All fireworks EX approvals with expiration dates will expire by the end of 2015.

IV. Requests To Add Additional Item Names to Existing EX Classification Approvals

We often receive applications to add fireworks device item names to an existing EX classification approval. Only a manufacturer or its designated agent may submit a request after June 29, 2011 to add an additional item name to an existing EX approval.

If anyone other than the manufacturer or its designated agent holds an existing EX classification approval and it is desired to add additional items to that approval, then the manufacturer or its designated agent must submit the EX classification approval as a new application.

V. Firework Applications Denied Before June 29, 2011

Firework applications resubmitted after June 29, 2011 by any person, company or entity other than the manufacturer or its designated agent that were previously denied will not be accepted unless those applications are submitted by the manufacturer or its designated agent as the applicant. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87–1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3).

VI. Non-Transferability of EX Approvals

EX approvals are non-transferrable, and therefore, may not be sold or transferred. Accordingly, EX approvals cannot be acquired in connection with any sale of assets, sale of business, acquisition or merger. PHMSA may find a company in violation of the HMR should a manufacturer attempt to use an EX approval issued by PHMSA to another company for manufacturing of the device. The manufacturer or its designated agent must submit an application for a new approval. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87–1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3). If approved, PHMSA will issue a new EX approval to the manufacturer specified in the application.

Summary

PHMSA's Office of Hazardous Materials Safety (OHMS), Approvals Office will continue to issue approvals only to fireworks manufacturers and accept applications only from manufacturers or their designated agents. Consistent with this policy, we will only reissue EX classification approvals with expiration dates that have been submitted by the manufacturer or its designated agent. If the manufacturer was not the original applicant, the manufacturer or its

designated agent must submit the application as a new application. However, we will provide an extended expiration date of two years for EX classification approvals that expire through December 31, 2012.

Additionally, we will only accept applications that seek to add new item names to existing EX classification approvals from the manufacturer or its designated agent. If the manufacturer was not the original applicant, the application must be submitted by the manufacturer or its designated agent as a new application. Further, applications from non-manufacturers that were denied prior to June 29, 2011 must be resubmitted by the manufacturer.

Finally, EX approvals are non-transferable, and therefore may not be sold or transferred.

Issued in Washington, DC, on December 30, 2011.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–33853 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2010–0056; FF09A30000 123 FXGO16710900000R4]

RIN 1018–AX29

Endangered and Threatened Wildlife and Plants; Removal of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the regulations that implement the Endangered Species Act of 1973, as amended (Act), by removing the exclusion of U.S. captive-bred live wildlife and sport-hunted trophies of three endangered antelopes—scimitar-horned oryx, addax, and dama gazelle—from the prohibition of certain activities, such as take and export, under the Act. This change to the regulations is in response to a court order that found that the rule for these three species violated section 10(c) of the Act. These three antelope species remain listed as endangered under the Act, and a person will need to qualify for an exemption or obtain an authorization under the current statutory and regulatory requirements to conduct any prohibited activities.

DATES: This rule becomes effective on April 4, 2012. An extended effective date is being provided to facilitate in outreach to the affected communities. Several major industry events are occurring in the beginning of 2012 where Service attendance will provide greater communication on the impacts of this rule and will ensure greater compliance by the affected communities. In addition, an extended effective date will allow the affected community to either legally sell their specimens, if they choose to divest themselves of these species, or to apply for authorization or permits to continue carrying out previously approved activities.

ADDRESSES: You may obtain information about permits or other authorizations to carry out otherwise prohibited activities by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: (703) 358–2104 or (toll free) (800) 358–2104; facsimile: (703) 358–2281; email: *managementauthority@fws.gov;* Web site: *http://www.fws.gov/international/index.html.*

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–2093; fax 703–358–2280. If you use a telecommunications devise for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2005 (70 FR 52319), the Service determined that the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) were endangered throughout their ranges under the Act (16 U.S.C. 1531 *et seq.*). The numbers of these species of antelopes in the wild have declined drastically in the deserts of North Africa over the past 50 years. The causes of decline are habitat loss (desertification, permanent human settlement, and competition with domestic livestock), regional military activity, and uncontrolled killing. With the exception of reintroduced animals, no sightings of the scimitar-horned oryx have been reported since the late 1980s. Remnant populations of the addax may still exist in remote desert areas, but probably fewer than 600 occur in the wild. Only small numbers of dama gazelle are estimated to occur in the species' historical range, with recent estimates of fewer than 700 in the wild. Captive-breeding programs operated by zoos and private ranches have increased the number of these antelopes, while genetically managing their herds and providing founder stock necessary for reintroduction. The Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program estimated that there are 4,000–5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle in captivity worldwide, many of which are held in the United States. Based on a 2010 census of its members, the Exotic Wildlife Association (EWA) estimates there are 11,032 scimitar-horned oryx, 5,112 addax, and 894 dama gazelle on EWA member ranches.

On September 2, 2005 (the same date that we listed the three antelopes as endangered), the Service also published a new regulation (70 FR 52310) at 50 CFR 17.21(h) to govern certain activities with U.S. captive-bred animals of these three species. For live antelopes, including embryos and gametes, and sport-hunted trophies of these three species, the regulation authorized certain otherwise prohibited activities where the purpose of the activity is associated with the management of the species in a manner that contributed to increasing or sustaining captive numbers or to potential reintroduction to range countries. These activities include take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce.

The promulgation of the regulation at 50 CFR 17.21(h) was challenged as violating section 10 of the Act and the National Environmental Policy Act (42 U.S.C. 4321 et seq.) in the United States District Court for the District of Columbia (see *Friends of Animals, et al.,* v. *Ken Salazar, Secretary of the Interior* and *Rebecca Ann Cary, et al.,* v. *Rowan Gould, Acting Director, Fish and Wildlife Service, et al., 626 F. Supp. 2d 102* (D.D.C. 2009)). The Court found that the rule for the three antelope species violated section 10(c) of the Act by not providing the public an opportunity to comment on activities being carried out with these three antelope species. On June 22, 2009, the Court remanded the rule to the Service for action consistent with its opinion.

To comply with the Court's order, the Service published a proposed rule on July 7, 2011 (76 FR 39804), to remove the regulation at 50 CFR 17.21(h), thus eliminating the exclusion for U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions under the Act. Under the proposed rule, any person who intend to conduct an otherwise prohibited activity with U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle would need to qualify for an exemption or obtain authorization for such activity under the Act and applicable regulations.

Removal of 50 CFR 17.21(h)

Under 50 CFR 17.21(h), individuals carrying out certain activities that would contribute to increasing or sustaining the captive numbers of the three species were not required to notify the Service of those activities involving these species, provided that those activities met the criteria established within these regulations. As the Service was not notified of any proposed activities, it could not in turn provide the public an opportunity to comment on those proposed activities. By eliminating the regulation at 50 CFR 17.21(h) and requiring individuals to submit an application, as described in 50 CFR 17.21(g) or 17.22, requesting authorization to carry out an otherwise prohibited activity, the Service can provide the public a 30-day period to comment on any proposed activities. The elimination of this regulation does not alter the current listing status of the species, but does now require that the Service must grant individuals authorization prior to their conducting any activity that is prohibited by the Act.

The Service considered whether there were alternative means to comply with the Court's ruling without requiring ranches or other facilities holding these species to obtain a permit or other authorization. However, the Service was unable to identify an alternative other than the currently established regulations at 50 CFR 17.21(g) and 17.22—providing for the registration of captive-bred wildlife or issuance of a permit—that would provide the public an opportunity to comment on proposed activities being carried out with these species. In addition, the Service did not receive any comments or suggestions from the public that presented a viable alternative (see *Summary of Comments and Our Responses,* below).

Summary of Comments and Our Responses

In our proposed rule (July 7, 2011; 76 FR 39804), we asked interested parties to submit comments or suggestions regarding the proposal to eliminate the regulation at 50 CFR 17.21(h). The comment period for the proposed rule lasted for 30 days, ending August 8, 2011. We received 93 individual comments during the comment period. Comments were received from 2 State agencies; 8 nongovernment organizations, several of which commented jointly; and 86 individuals, most of whom either own ranches that currently maintain animals of the three antelope species or are associated with such ranches. Many of the comments did not specifically address the reason for which the proposal was made—that the exclusion violated the provisions of section 10(c) of the Act—nor did they present alternatives to the proposal to eliminate the regulation; instead the comments focused either on the impact to the ranches if the regulation were eliminated or on the listing of the species. Of the commenters, six supported the proposal to eliminate the regulation, and 90 opposed the proposal either directly or indirectly. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: One commenter stated that sections 10(c) and 10(d) of the Act mandates the Service to provide the required informational notice and an opportunity to comment, but that the Court did not require the Service to develop a new permitting scheme or adopt current permitting processes to provide notice and comment. The commenter went on to assert that the Court, by finding that the plaintiffs did not have standing to challenge the merits of whether the activities conducted on the ranches met the criteria of section 10(a)(1)(A) of the Act, had concluded that the ranches were, therefore, meeting the enhancement criteria and that any future permitting should be 'pro forma.'

Three nongovernment organizations concluded that the Court gave the Service no options but to vacate the regulation and apply the same permitting scheme currently outlined in 50 CFR 17.22 for these three antelope.

One commenter stated that, by choosing to impose a permit system instead of some other means of addressing the Court's finding, the Service failed to consider other options. The commenter expressed the opinion that using the current permitting process would cause the three species more harm than good. Two other commenters encouraged the Service to consider all avenues and remedies and the effects they would have on the three antelope species.

Our Response: The Service agrees that the Court's finding left us no options but to rescind the current regulation at 50 CFR 17.21(h). While the Service agrees that the Court did not mandate us to apply the same permitting scheme established in 50 CFR 17.22 or the registration process identified in 50 CFR 17.21(g), we could find no alternative approach other than existing statutory and regulatory procedures. Further, no commenters provided reasonable alternatives to this approach (see *Issue 15,* below). Consequently, with the elimination of the regulation at 50 CFR 17.21(h), anyone wishing to carry out otherwise prohibited activities would need to either apply for a permit (50 CFR 17.22) or for the captive-bred wildlife registration (50 CFR 17.21(g)).

The Service disagrees with the first commenter's statement that, because the Court did not rule on the merits of whether the ranches were meeting the enhancement criteria, the Court found that these ranches provide enhancement. The Court did not rule one way or another on the merits of the plaintiffs' case regarding the actions conducted on ranches under sections 10(c) or 10(d). In addition, under 50 CFR 17.21(g) and 17.22, we cannot unquestionably accept that the activities of a ranch with these species have a presumptive enhancement value and therefore issue a permit or other authorization 'pro forma.' Any applicant requesting authorization to carry out an otherwise prohibited activity would need to provide adequate information and documentation in their application to show that they are meeting the issuance criteria established at 50 CFR 17.21(g) or 17.22 before authorization can be granted by the Service.

Issue 2: A large number (57) of commenters expressed concern that ranchers and other private holders of captive-bred scimitar-horned oryx, addax, and dama gazelle would no longer have an economic incentive to manage the species if the exclusions were removed. Some commenters went further in stating that the removal of the exclusion would have substantial negative economic impacts on game farms and related support industries, local economies, and jobs. Two commenters stated that because most businesses involved with these species are extremely small, often with only one or two employees, the proposed regulation would be a significant burden and that any pressure that affects local

business and citizens may have a major impact on the viability of local economies. One commenter stated that the review and statistical findings of the annual economic impact of removing the exclusion was ''abstract at best, and incomplete, misleading, and irresponsible to reality.'' This commenter stated that the use of $100 million by the Office of Management and Budget (OMB) as the benchmark in evaluating the merits of the economic impact of the consequences associated with permit requirements has no quantitative support. The commenter felt that OMB could not accurately quantify the financial impact of lifting the permit requirements for these three species. Several commenters said that the Service should keep the exclusion for captive-bred individuals for the very reason that these species are doing fine without any further government regulation.

Our Response: The elimination of this regulation should not result in lower economic incentives or a negative economic impact, provided that the ranches were carrying out activities that were approved under the regulation. The regulation at 50 CFR 17.21(h) authorized certain otherwise prohibited activities without a permit for individuals or ranches that carried out activities that contributed to increasing or sustaining captive numbers of these species. Further, the regulation required each person or ranch claiming the benefits of the exclusion to maintain accurate records of activities, including births, deaths, and transfers of specimens. These same activities could be authorized under 50 CFR 17.21(g) or 17.22. Thus, there should be little or no reduction of allowable activities. With the elimination of 50 CFR 17.21(h), ranches, zoos, and private individuals that maintain these three species will need to submit an application, including a nominal application fee, in order to receive authorization for activities that previously could have been conducted without a permit. We do not believe, however, that the permitting process, including the application fee or possible submission of records that should already be maintained, will result in any significant financial burden. This is particularly so given that the Service has made efforts in recent years to streamline the permitting process and issue permits to authorize multiple activities for an extended period of time.

The Service does recognize, however, that there may be an economic impact if people believe that the elimination of this regulation changes the status of the species and therefore creates a change in activities that may be authorized. Provided that the ranch, zoo, or individual is carrying out activities that benefit or enhance the propagation or survival of the species, as was previously required under the regulation at 50 CFR 17.21(h), otherwise prohibited activities, including limited hunting for herd management purposes, can be authorized. Ranches may need to redesign their marketing efforts, but this change to the regulations should not stop ranches from conducting activities that were previously authorized under 50 CFR 17.21(h).

The Service acknowledges the commenter's concern regarding the benchmark in evaluating the merits of the economic impact on ranches. However, the use of $100 million is set by Executive Order and the Small Business Regulatory Enforcement Fairness Act. The Service does not have the ability to establish an alternative benchmark or how the review is conducted.

Issue 3: Two commenters wrote that the removal of the exclusion leaves the Service with two possible solutions: either the species is allowed to go extinct or the U.S. Government provides subsidies for a mandated conservation plan. The commenters felt that both of these options have negative outcomes—one results in extinction of the species and the other increases government spending at a time when cutbacks are needed.

Our Response: The Service disagrees that the removal of this regulation will result in either the extinction of the species or the need to subsidize conservation efforts. Many facilities and ranches that currently maintain these species will continue to do so, regardless of whether or not they are exempt from prohibitions under the Act. We are confident of this because a number of similar species, also bred and maintained in U.S. ranches, are subject to the same permitting and registration requirements we will apply to the three antelope species when 50 CFR 17.21(h) is removed (see **DATES**, above). The species will not become extinct due to our actions under this rulemaking. Further, the Service cannot provide subsidies to private ranches or facilities to continue to maintain these species. We are confident, however, that such subsidies are not necessary and that many, if not all, operations will continue to maintain these species and provide an ongoing conservation benefit to the species.

Issue 4: Thirty-two commenters pointed out that intensive wildlife management by U.S. ranchers is the reason the species exist today. These commenters were concerned that removal of the exclusion that allows breeding and hunting of these animals without a permit would impede private captive propagation of these species. They expressed the view that the requirement of obtaining authorization or permits before carrying out previously exempted activities would cause a significant loss of critical genetic diversity because private holders, who retain most of the captive animals of these three species in the United States, might dispose of their current stock. Captive groups of these species would shrink, and, potentially, the species would be allowed to go extinct. In addition, they stated that the exclusion allows greater numbers of these animals to be bred than the numbers bred by zoos, wildlife parks, and individuals alone, thus maintaining a larger and more diverse gene pool, which allows some ranchers to contribute selected animals for possible reintroduction to their natural environment.

Our Response: The Service does not believe that ranchers or other holders of these species that are working for the conservation of the species will reduce or eliminate their herds just because a permit or other authorization will now be required. Ranches that currently have other endangered hoofstock already obtain permits for the same activities with those other species. The Act does not regulate possession or purely intrastate activities (with the exception of take). Provided that a ranch was legally carrying out activities that were authorized under 50 CFR 17.21(h) before the elimination of that regulation, the ranch should be able to continue those activities under a permit or registration. There should be no reduction in herds that were actually being used for conservation purposes.

It is possible, however, that the number of ranches or private individuals that currently maintain these species could reduce the size of their herds or remove them from their property under the belief that maintaining them would be an economic burden. This reduction in the number of herds should not significantly influence the genetics of the remaining herds, if they are being properly maintained.

Issue 5: One commenter stated that the numbers of animals maintained on ranches given in the proposed rule were incorrectly low and that the Exotic Wildlife Association (EWA) has numbers that are more accurate.

Our Response: The numbers identified in the proposed rule were estimates based on the information

available at the time the rule was drafted. The Service is aware that EWA has conducted surveys that indicated the actual numbers might be higher. This does not affect what the Service is legally required to do given the Court order. We have incorporated EWA's estimates into this final rule (see *Background,* above).

Issue 6: The Association of Zoos and Aquariums (AZA) expressed concern that the elimination of the exclusion from prohibited activities for the captive animals of these three species would undermine their goal of maintaining genetic diversity. They expressed concerns that their members' efforts in moving listed species have been hampered by permit delays of 6 to 9 months while enhancement findings are being made, which is problematic because there are very few *in situ* conservation programs available for these species.

Our Response: The Service is unclear on how the removal of 50 CFR 17.21(h) will affect the ability of AZA facilities to maintain the genetic diversity of the captive populations or to move animals as part of this effort. Barring any failure on the part of the applicant to meet the criteria for permit issuance, in only limited cases has the permitting process for AZA facilities exceeded 120 days. Except for the import or export of animals, no permits will be required for zoos to move animals among institutions strictly for population management purposes if there is no commercial activity involved.

Issue 7: Three nongovernmental organizations, in expressing their support for the proposed rule, felt that rescinding the regulation would further avoid a precedent that commercial exploitation is automatically authorized merely on the theory that captive breeding, in and of itself, will enhance the survival of listed species.

Our Response: While the Service does believe that captive breeding can provide a significant benefit to endangered species, such benefits can only be realized when the breeding program is scientifically based and conducted in a manner that contributes to the continued survival of the species. This was the basis for establishing the regulation at 50 CFR 17.21(h). However, breeding just to breed, without adequate attention to genetic composition and demographics of the breeding population, may not provide a clear conservation benefit to an endangered species. Even absent 50 CFR 17.21(h), ranches, zoos, and private individuals holding these three species should be able to continue to maintain viable, well-managed, captive groups of animals that can be used as a source of stock for reintroduction programs in the future, if such actions are feasible and beneficial to the long-term survival of the species, as has been done for a number of other species.

Issue 8: Numerous commenters raised questions about the current listing of the three species as endangered under the Act. One commenter said that the U.S. captive-bred animals of these three species of exotic antelopes should never have been included in the listing of the species as endangered, because, in their opinion, the Act was not meant to cover privately owned animals. Three commenters suggested that the Service remove these species from the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Two commenters recommended that the Service not finalize any permit scheme for these three species until the Service has fully exhausted all options for altering the current endangered species listing status for U.S. captive herds, making permits unnecessary for these captive animals. One commenter argued that to eliminate this exclusion without removing these species from the List of Endangered and Threatened Wildlife would violate the President's January 18, 2011, Executive Order (E.O. 13563), which requires Federal agencies to ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.''

Our Response: The proposed rule only addressed the Court's finding that the regulations at 50 CFR 17.21(h) violate section 10(c) of the Act. Discussion of the listing status of these species, including changing that status, is outside the scope of this rulemaking. Two petitions have been submitted to the Service to request reconsideration of the listing status of these species, but the Service must complete this rulemaking now in order to comply with the Court order; we cannot delay this action until the time when the petitions have been fully addressed.

In addition to taking this action as necessary to comply with the Court's order, the Service does not agree that eliminating 50 CFR 17.21(h) will violate the January 18, 2011, Executive Order. In fact, the Executive Order calls on Federal agencies to develop regulations that ''allow for public participation and an open exchange of ideas.'' While the elimination of 50 CFR 17.21(h) has been perceived as having a significant economic impact on some ranches, it has been determined that the benefits of this action justify its costs by impose the least burden on society and identifying specify avenues for carrying out otherwise prohibited activities.

Issue 9: Three commenters thought the Federal government should not regulate the harvest of animals that are not native to the United States. They felt that no permits should be needed to provide a sustainable environment where exotic species can thrive and increase in numbers. The Texas Department of Agriculture (DOA) believes that ''regulating the domestic management of these animals is beyond the fundamental intent of the Endangered Species Act.''

Our Response: The Service disagrees. The Act specifically covers any species that is listed as endangered or threatened, whether it is native to the United States or non-native and whether it is in captivity or in the wild. The prohibitions apply to all listed specimens. But the Act's prohibitions are limited. Therefore, no permits are required to breed or maintain a listed species. It is only when an individual attempts to carry out an activity that is otherwise prohibited under the Act, such as transport in interstate or foreign commerce in the course of a commercial activity, import or export, or take, that the Service has a mandate to regulate the activity.

Issue 10: The Texas Parks & Wildlife Department (TPW) expressed concern about the possible unintended consequences of the proposed rule. If the exclusion is revoked, the TPW is concerned that some owners may release animals onto previously unoccupied range, leading to uncontrolled population growth, damage to native plant communities, and other potentially negative impacts on native habitat. Another commenter expressed the same concern about the huge herds of free-ranging exotics that have escaped from captivity throughout Texas, and believed it was important that private landowners be able to continue to control and manage exotic animals in order to prevent destruction of vegetation and degradation of wild habitats by large numbers of native and exotic ungulates. The commenter thought it was, ''critical that the state be provided the option for exclusive jurisdiction over the management of non-native, non-indigenous exotic pig, goat, sheep, elk, deer, antelope, and gazelle species within the borders of that State.'' The commenter felt that this would be consistent with the public trust doctrine, under which the States are entrusted with regulatory oversight of native wildlife resources and impacts of native wildlife.

Our Response: The Service does not expect this rule to result in the intentional release of significant numbers of the three species into

previously unoccupied areas of the United States. However, the Service does recognize that there are free-ranging herds of exotic species in Texas and other States that have a negative impact on native vegetation and wildlife. The Service also supports efforts carried out by various States to control these exotic species to reduce their impacts on native ecosystems. There are a number of exotic ungulates listed under the Act as either endangered or threatened that are commonly held on ranches in Texas and other States. We encourage cooperation between State wildlife agencies and ranches that maintain exotic species to develop best management practices to reduce the escape of exotic species. Ongoing efforts are needed to coordinate Federal and State efforts to control the spread of these listed exotics onto pristine areas where native wildlife and vegetation could be affected.

Through the Act, Congress gave jurisdiction to determine which species qualify as endangered or threatened, and responsibility for their protection and recovery, to the Service and the National Marine Fisheries Service. States are essential partners in endangered species conservation, but only the Service can authorize activities with these species that would be otherwise prohibited, and nothing under the public trust doctrine affects this legal regime.

Issue 11: One commenter pointed out that the Service has no plan or way of taking custody of or caring for any of the unwanted animals resulting from the elimination of the exclusion at 50 CFR 17.21(h). The commenter also felt that the Service or nongovernment organizations that support the elimination of the regulation should provide a plan to reimburse or compensate the owners of these animals for their lost revenue and investment if the regulation is eliminated. Another commenter questioned whether taking away the incentive for landowners to propagate these species was in fact a case of ''de facto taking.'' A third commenter felt it would be a taking if the final rule impedes his ability to have economic benefit from maintaining herds of these antelopes. Two other commenters did not think the government had the right to control personal property. Finally, another commenter said that the proposed elimination of 50 CFR 17.21(h) infringes on the free market and private property rights.

Our Response: The commenter is correct that the Service has no plans to take custody of any animals currently held on private property or to compensate current owners for any perceived loss of revenue. Such compensation or assuming custody of these species is not within the Service's authority. Further, the Service disagrees that the elimination of 50 CFR 17.21(h) constitutes a taking, because it does not deprive the owners of these animals from continuing to derive an economic benefit from them. This rule is not a taking of property because individuals can obtain authorization for the same otherwise prohibited activities with these three endangered antelopes when issuance criteria are met as they had under 50 CFR 17.21(h). Provided that a rancher meets the criteria for obtaining a permit, which are similar or identical to the criteria established at 50 CFR 17.21(h) for carrying out otherwise prohibited activities, the rancher will be able to obtain a permit or authorization to carry out the same activities that the rancher currently conducts. This rule does not infringe on any property rights or adversely affect the free market when activities are conducted in a manner consistent with the requirements of the Act.

Issue 12: A number of commenters raised the issue of hunting of these species. Two commenters said that the Service should protect endangered exotic wildlife from hunting and further killing. Three other commenters stated that hunters have saved most of these animals from decline and feel that hunting these animals should not be viewed as a threat to species numbers. It is their supposition that the steady hunting demand for these species has ensured the continued propagation and survival of the species. They pointed to the conservation success story of North American elk, white-tailed deer, waterfowl, and turkeys as evidence that their survival is due in large part to the American hunter.

Our Response: The Service has stated on numerous occasions that scientifically based hunting programs can provide a benefit to the long-term survival of a species. The American hunter has clearly provided benefits to many species. Hunting of exotic species within the United States can also benefit the survival of the species involved if the hunting program and other activities with the species are carried out in a manner that contributes to increasing or sustaining the number of animals in captivity or to potential reintroduction to range countries.

Issue 13: Several commenters suggested that the removal of the exclusion at 50 CFR 17.21(h) is not based on logic, but rather on political opinions and personal philosophies to end all hunting over sound science, professional wildlife management, and demonstrated success in preserving these species.

Our Response: The removal of the regulation at 50 CFR 17.21(h) is based on the Court decision that the regulation is in violation of section 10(c) of the Act. The Service could see no other option than to remove this regulation to ensure that we complied with the Court order. This action is not a reflection of the Service's position on hunting or successes that have been achieved with the three antelope species or any other species.

Issue 14: Two commenters thought that current conditions within the native range of these species are not conducive to reintroduction. They expressed the opinion that few governments of the native countries want to protect or increase the numbers of these species and stated that the repatriation project of the Second Ark Foundation and Exotic Wildlife Association has met with many roadblocks.

Our Response: The Service understands that many factors contribute to the successful reintroduction of a species to its native range. We acknowledge that the Second Ark Foundation and Exotic Wildlife Association have been confronted with obstacles to providing specimens for reintroduction, and we understand that such reintroduction programs can often be difficult in developing countries for any species. Currently, we are aware that there are only a limited number of *in situ* conservation programs available for these species, but that does not affect how we must apply the requirements of the Act to their captive animals in the United States.

Issue 15: Many commenters expressed concerns that the current permitting process does not work well and is a disincentive to ranching operations. Two commenters thought the Service should create an alternative permitting process that includes an online submission process to register herds and obtain take permits electronically, develop the ability to receive electronic reports, develop scientifically based cull requirements, and allocate permit application fees to *in situ* conservation efforts. One commenter suggested that the Service implement a herd inventory monitoring program to get additional information for making permitting decisions. Several commenters provided specific examples of how to improve the permitting process to reduce unnecessary burdens in the interest of the species. Suggestions included combining the application processes for registration under the captive wildlife

registration (50 CFR 17.21(g)) and take permits (50 CFR 17.22) or revising the applications to be clearer. Other comments included moving to an electronic application process, making permits valid for a longer period of time, and reviewing and processing applications in a more timely manner. One commenter, while believing no regulation is needed, could accept some form of moderately priced, multi-year permit that requires limited annual report data. One commenter said expectations related to transfers between facilities, including breeding-only and hunting-only operations, must be well defined in order to provide landowners with a transparent process. Two commenters suggested working with a State's wildlife authority to regulate and oversee the permitting process to increase cooperation with landowners. The AZA suggested that there needs to be a provision that allows AZA institutions to engage in time-sensitive international movement of these animals for noncommercial purposes, such as breeding loans or reintroduction, without having to obtain additional permits.

Several commenters expressed opinions on what would constitute enhancement or furthering the conservation of the species so that permits or authorizations could be granted. Three nongovernment organizations were concerned that the existing permitting system would undermine the conservation of these antelope species due to questions on whether or not current permits are being issued in accordance with the Act. One commenter suggested that permits must provide flexibility in harvest allowances to allow managers to maintain balanced numbers relative to habitat carrying capacities. Another commenter recommended that the permit address additional harvest protocols and emergency response for when properties enter severe, extreme, or exceptional drought.

Our Response: These comments are outside the scope of this rulemaking because they do not address the Court's ruling that 50 CFR 17.21(h) violates section 10(c) of the Act and the rescission of 17.21(h). Nevertheless, the Service appreciates the comments and will consider them as we develop ways to improve the efficiency and effectiveness of our permitting process. We are currently working on certain improvements, such as the development of electronic applications and more timely review processes. We are considering other efficiency improvements as well. We encourage anyone who has recommendations on how to improve our current permitting process to contact the Service's Division of Management Authority, Branch of Permits (see **ADDRESSES**, above).

Issue 16: Two commenters recommended that the public comment period for permit applications, which is currently 30 days, should be eliminated, or reduced to no more than 14 days. In addition, they suggested only comments offered by knowledgeable persons that actually own or deal with the species should be considered.

Our Response: Section 10(c) of the Act specifies that the comment period be 30 days. Because the 30-day comment period is set by statute, we cannot shorten it by regulation. In addition, the Act states that comments are welcome from any interested party, and therefore all comments that are received during an open comment period are considered .

Issue 17: One commenter suggested that any new regulations should include an anti-harassment provision with a $10,000 fine for those who use the information made available through the application process to directly or indirectly harass or otherwise interfere with the applicant's operation or business. Harassment should include the use of deception or misrepresentation to get access to the applicant's private operations.

Our Response: The Service does not have the authority to include an anti-harassment provision in our regulations under the Act. There are other legal remedies to address harassment. Information that is made available through the public comment process is intended to provide the public an understanding of the activities being proposed. It is not intended to provide anyone with the opportunity to harass directly or indirectly, or to interfere in lawfully conducted activities.

Issue 18: One commenter recommended that the definition of ''captive-bred'' be amended, ''to reflect only those animals and genetic materials designated for potential reintroduction under the direction of scientists of the Association of Zoos and Aquariums (AZA) institutions for all non-native, non-indigenous exotic pig, goat, sheep, elk, deer, antelope and gazelle species.'' The commenter suggested that this could be used as a basis to exempt privately raised animals on Texas ranches from any rules defining ''captive-bred'' animals.

Our Response: The proposed rule only addressed the Court's finding that the regulations at 50 CFR 17.21(h) violate section 10(c) of the Act. Discussion of the definition of ''captive-bred'', including changing that definition within the regulations, is outside the scope of this rulemaking. However, the Act specifically covers any species that is listed as endangered or threatened, whether it is in captivity, including those that are captive-bred or wild. The prohibitions apply to all listed specimens. Changes to the definition would not be a basis for exempting privately raised animals.

Consistent with the Court's ruling that the regulation at 50 CFR 17.21(h) is in violation of section 10(c) of the Act and following consideration of all comments, the Service is eliminating the regulation at 50 CFR 17.21(h). When the final rule takes effect (see **DATES**, above), individuals who intend to carry out otherwise prohibited activities will need to have authorization either under 50 CFR 17.21(g) or 17.22.

Required Determinations

Regulatory Planning and Review—Executive Order 12866: The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved in taking, exporting, re-importing, and selling in interstate or foreign commerce of these three endangered antelopes are considered small as defined by the SBA.

This rule requires individuals and captive-breeding operations of the three endangered antelopes to apply for authorization and pay an application fee of $100 to $200 every 1–5 years, depending on the type of permit or authorization, when conducting certain otherwise prohibited activities. While there are no accurate numbers of U.S. facilities with these animals, estimates range as high as about 400. It is not clear if all of these facilities would be conducting activities that would be otherwise prohibited under the Act; however, if the total is 400 and they all require permits for continuing activities they have been conducting under the exclusion that is being rescinded, the maximum annual cost to all of them for obtaining permits would be about $50,000–60,000. The regulatory change is not major in scope and creates only a modest financial or paperwork burden on the affected members of the general public.

We, therefore, certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act: This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more. This rule removes the regulation at 50 CFR 17.21(h) that excludes U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions of the Act. Current estimates indicate that about 12,000 to 13,000 of these animals occur in captive-breeding operations in the United States. About 11,000 are scimitar-horned oryx with a value of $1,500 to $3,000 each (based on internet advertisements), for a total value of $33,000,000, although only a fraction of these are sold for breeding or as trophies annually. Addax and dama gazelle are fewer in number (several hundred each), but more valuable as both breeding stock and trophies, with values of mature animals up to $4,000–$6,000 each. Assuming 2,000 animals of these two species at a value of $4,000 each, the total value is $8,000,000, but again the revenue generated by these animals will be a fraction of this amount because breeding operations will retain a significant portion of their animals for further breeding. Individuals and captive-breeding operations will now need to qualify for an exemption or obtain endangered species permits or other authorization to engage in certain otherwise prohibited activities. Permit application fees of $100–$200 will be required for anyone seeking permits, and we estimate up to 400 potential permit applicants, although some authorizations will remain in effect for up to 5 years from one application. This rule does not have a negative effect on this part of the economy. It will affect all businesses, whether large or small, the same. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule will result in a small increase in the number of applications for permits or other authorizations to conduct otherwise prohibited activities with these three endangered antelope species.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not significantly or uniquely affect small governments. A small government agency plan is not required.

b. This rule will not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this rule will not have significant takings implications. A takings implication assessment is not required. This rule does not have takings implications because individuals can still obtain authorization for the same otherwise prohibited activities with these three endangered antelopes when issuance criteria are met.

Federalism: This revision to part 17 does not contain significant Federalism implications. A federalism impact summary statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of subsections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Numbers 1018–0093 and 1018–0094. This rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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.

National Environmental Policy Act (NEPA): The Service has determined that this rule is a regulatory change that is administrative and legal in nature. The rescission of this rule responds to a Court ruling finding that 50 CFR 17.21(h) violates section 10(c) of the Act and remanding to the agency for further proceedings consistent with its opinion. As such, the rule is categorically excluded from further NEPA review as provided by 43 CFR 46.210(i) of the Department of the Interior's Implementation of the National Environmental Policy Act of 1969 regulations (73 FR 61292; October 15, 2008). No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution or Use: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. This rule does not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we are amending part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.21 [Amended]

■ 2. Amend § 17.21 by removing paragraph (h).

Dated: December 27, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–23 Filed 1–3–12; 11:15 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA917

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 5, 2012, until the effective date of the final 2012 and 2013 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**. Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0307, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0307 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.

• *Hand Delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2011 and 2012 harvest specifications for groundfish in the GOA (76 FR 11111, March 1, 2011) and Pacific cod revision (76 FR 81860, December 29, 2011) set the 2012 pollock TAC at 121,649 metric tons (mt) and the 2012 Pacific cod TAC at 58,650 mt in the GOA. In December 2011, the Council recommended a 2012 pollock TAC of 116,444 mt for the GOA, which is less than the 121,649 mt established by the final 2011 and 2012 GOA harvest specifications. The Council also recommended a 2012 Pacific cod TAC of 65,700 mt for the GOA, which is more than the 58,650 mt established by the final 2011 and 2012 harvest specifications for groundfish in the GOA. The Council's recommended 2012 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently,

pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2012 GOA pollock TAC to 116,444 mt and the 2012 GOA Pacific cod TAC to 65,700 mt.

Pursuant to § 679.20(a)(5)(iv), Table 6 of the final 2011 and 2012 harvest specifications for groundfish in the GOA (76 FR 11111, March 1, 2011) is revised for the 2012 pollock TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 6—FINAL 2012 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season [1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [2]
A (Jan 20–Mar 10)	5,797	(22.64%)	14,023	(54.76%)	5,787	(22.60%)	25,607
B (Mar 10–May 31)	5,797	(22.64%)	17,221	(67.25%)	2,589	(10.11%)	25,607
C (Aug 25–Oct 1)	9,338	(36.47%)	7,282	(28.44%)	8,986	(35.10%)	25,606
D (Oct 1–Nov 1)	9,338	(36.47%)	7,282	(28.44%)	8,986	(35.10%)	25,606
Annual Total	30,270		45,808		26,348		102,426

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Note: Seasonal allowances may not total precisely to annual TAC total due to rounding down, rather than up.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 8 of the final 2011 and 2012 harvest specifications for groundfish in the GOA (76 FR 11111, March 1, 2011) and Pacific cod revision (76 FR 81860, December 29, 2011) is revised for the 2012 Pacific cod TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 8—FINAL 2012 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector % of annual non-jig TAC	Seasonal allowances (mt)	Sector % of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (1.5% of TAC)	315	N/A	189	N/A	126
Hook-and-line CV	290	0.70	145	0.70	145
Hook-and-line C/P	4,100	10.90	2,257	8.90	1,843
Trawl CV	7,952	27.70	5,736	10.70	2,216
Trawl C/P	497	0.90	186	1.50	311
All Pot CV and Pot C/P	7,869	19.80	4,100	18.20	3,769
Total	21,024	60.00	12,614	40.00	8,410
Central GOA:					
Jig (1.0% of TAC)	427	N/A	256	N/A	171
Hook-and-line < 50 CV	6,174	9.32	3,938	5.29	2,235
Hook-and-line ≥ 50 CV	2,835	5.61	2,372	1.10	464
Hook-and-line C/P	2,158	4.11	1,736	1.00	422
Trawl CV	17,581	21.14	8,936	20.45	8,645
Trawl C/P	1,775	2.00	847	2.19	928
All Pot CV and Pot C/P	11,755	17.83	7,538	9.97	4,217
Total	42,705	60.00	25,623	40.00	17,082
Eastern GOA	1,971	Inshore (90% of Annual TAC) 1,774		Offshore (10% of Annual TAC) 197	

Note: Seasonal apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 29, 2011, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 20, 2012.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 30, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–33849 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 3
Thursday, January 5, 2012

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

[Docket No. PRM–50–103; NRC–2011–0189]

Measurement and Control of Combustible Gas Generation and Dispersal

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received a petition for rulemaking (PRM), dated October 14, 2011, from the Natural Resources Defense Council, Inc. (NRDC or the petitioner). The petitioner requests that the NRC amend its regulations regarding the measurement and control of combustible gas generation and dispersal within a power reactor system. The NRC is not instituting a public comment period for this PRM at this time.

DATES: January 5, 2012.

ADDRESSES: You can access publicly available documents related to this action, including the petition for rulemaking, using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copies made, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1– (800) –397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The PRM is available in ADAMS under ADAMS Accession Number ML11301A094.
- *Federal Rulemaking Web Site:* Supporting materials related to the petition for rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0189. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3667, email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 14, 2011, Mr. C. Jordan Weaver, a Project Scientist for the Natural Resources Defense Council, Inc. (NRDC or petitioner) submitted a cover letter and a petition for rulemaking (PRM) to revise 10 CFR 50.44 (ADAMS Accession No. ML11301A094). The PRM, which was an attachment to the NRDC cover letter signed by Mr. Weaver, was itself signed by Mr. Mark Edward Leyse. Mr. Leyse has previously filed several other petitions for rulemaking with the NRC on matters related to the NRC's requirements on the emergency core cooling system (ECCS). *See* PRM–50–73 (ADAMS Accession No. ML012560310); PRM–50–73A (ADAMS Accession No. ML020300271); PRM–50–76 (ADAMS Accession No. ML022240009); PRM–50–84 (ADAMS Accession No. ML070871368); PRM–50–93 (ADAMS Accession No. ML093290250); PRM–50–95 (ADAMS Accession No. ML102770018). The NRDC PRM was docketed by the NRC on October 27, 2011 as PRM–50–103.

II. Petitioner

The NRDC is a national, nonprofit, membership environmental organization incorporated in New York in 1970. The NRDC has offices in Washington, DC, New York City, San Francisco, Chicago, Los Angeles, and Beijing. The staff membership of NRDC consists of lawyers, scientists, and policy experts. The NRDC states that its purpose is to maintain and enhance environmental quality and monitor Federal agency actions to ensure that Federal statutes enacted to protect human health and the environment are fully and properly implemented. With regard to the NRC, the NRDC asserts that, since its inception in 1970, it has sought to improve the environmental, health, and safety conditions at the nuclear facilities licensed by the NRC and its predecessor agency.

III. Petition

Mark Leyse, an NRDC consultant, researched and authored the PRM. The PRM requests that the NRC amend its regulations ''to enhance hydrogen mitigation at all [nuclear power plants] regulated by NRC.'' The PRM includes six separate rulemaking requests pertaining to pressurized water reactors (PWRs) and boiling water reactors (BWRs).

First, the petitioner requests that the NRC ''revise 10 CFR 50.44 to require that all PWRs (with large dry containments, sub-atmospheric containments, and ice condenser containments) and BWR Mark IIIs operate with systems for combustible gas control that would effectively and safely control the potential *total* quantity of hydrogen that could be generated in different severe accident scenarios.'' The petitioner states that the *total* quantity of hydrogen could exceed the amount generated from the metal-water reaction of 100 percent of the fuel cladding because of contributions produced by the metal-water reaction with non-fuel components of the reactor. The petitioner presents information from various analyses and reports to support this request.

Second, the petitioner requests that the NRC revise 10 CFR 50.44 to ''require that BWR Mark Is and BWR Mark IIs operate with systems for combustible gas control or inerted containments that would effectively and safely control the potential *total* quantity of hydrogen that could be generated in different severe accident scenarios.'' The petitioner states that the *total* quantity of hydrogen could exceed the amount generated from the metal-water reaction of 100 percent of the fuel cladding because of contributions produced by the metal-water reaction with non-fuel components of the reactor. The petitioner presents information from

various analyses and reports to support this request.

Third, the petitioner requests that the NRC revise 10 CFR 50.44 ''to require that PWRs and BWR Mark IIIs operate with systems for combustible gas control that would be capable of precluding local concentrations of hydrogen in the containment from exceeding concentrations that would support combustions, fast deflagrations, or detonations that could cause a loss of containment integrity or loss of necessary accident mitigating features.'' The petitioner presents information from various analyses and reports to support this request.

Fourth, the petitioner asserts that ''[t]he current requirement that hydrogen monitors be functional within 90-minutes after the initiation of safety injection is inadequate for protecting public and plant worker safety.'' Thus, the petitioner requests that the NRC revise 10 CFR 50.44 to ''require that PWRs and BWR Mark IIIs operate with combustible gas and oxygen monitoring systems that are qualified in accordance with 10 CFR 50.49. Petitioner also requests that NRC revise 10 CFR 50.44 to require that after the onset of a severe accident, combustible gas monitoring systems be functional within a timeframe that enables the proper monitoring of quantities of hydrogen indicative of core damage and indicative of a potential threat to the containment integrity.'' The petitioner presents information from various analyses and reports to support this request.

Fifth, the petitioner requests that the NRC revise 10 CFR 50.44 to ''require that licensees of PWRs and BWR Mark IIIs perform analyses that demonstrate containment structural integrity would be retained in the event of a severe accident.'' Additionally, the petitioner requests that the NRC revise 10 CFR 50.44 to require licensees of BWR Mark Is and BWR Mark IIs to perform analyses ''using the most advanced codes, which demonstrate containment structural integrity would be retained in the event of a severe accident.'' The petitioner presents information from various analyses and reports to support this request.

Sixth, the petitioner requests that the NRC revise 10 CFR 50.44 to ''require that licensees of PWRs with ice condenser containments and BWR Mark IIIs (and any other NPPs that would operate with hydrogen igniter systems) perform analyses that demonstrate hydrogen igniter systems would effectively and *safely* mitigate hydrogen in different severe accident scenarios.'' The petitioner presents information from various analyses and reports regarding hydrogen igniter systems to support this request.

IV. Determination of Petition

In PRM 50–103, the petitioner raises six issues regarding the measurement and control of combustible gas generation and dispersal within a reactor system. The Commission is currently reviewing the ''Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (Fukushima Task Force Report, ML111861807), dated July 12, 2011. The six requests included in the PRM relate to Recommendation 6 of the Fukushima Task Force Report: ''[t]he task force recommends, as part of the longer term review, that the NRC identify insights about hydrogen control and mitigation inside containment or in other buildings as additional information is revealed through further study of the Fukushima Dai-ichi accident.''

The Commission has recently directed staff to engage promptly with stakeholders to review and assess the recommendations of the Fukushima Task Force Report for the purpose of providing the Commission with fully-informed options and recommendations. *See* U.S. Nuclear Regulatory Commission, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' Staff Requirements Memorandum SECY–11–0093, August 19, 2011 (ADAMS Accession No. ML112310021) and U.S. Nuclear Regulatory Commission, ''Engagement of Stakeholders Regarding the Events in Japan,'' Staff Requirements Memorandum COMWDM–11–0001/COMWCO–11–0001, August 22, 2011 (ADAMS Accession No. ML112340693). The NRC has, therefore, decided to consider the issues raised by the PRM in a manner consistent with the process the Commission has established for addressing the recommendations from the Fukushima Task Force Report. Thus, the NRC will defer review of this PRM until the Commission gives further direction on Recommendation 6, to determine whether review of this PRM should be integrated with the effort related to the NRC staff's review of Fukushima Task Force Recommendation 6. The NRC is not requesting public comment at this time but may do so in the future, if it decides public comment would be appropriate.

V. Conclusion

The NRC will coordinate consideration of the issues raised by PRM 50–103 in a manner consistent with the process the Commission has established for addressing the recommendations from the Fukushima Task Force Report and is not providing a separate opportunity for public comment on this PRM at this time.

Dated at Rockville, Maryland, this 29th day of December 2011.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 2011–33817 Filed 1–4–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0072]

RIN 0651–AC66

Changes To Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Leahy-Smith America Invents Act expands the scope of information that any party may cite in a patent file, to include written statements made by a patent owner before a Federal court or the United States Patent and Trademark Office (Office) regarding the scope of any claim of the patent, and it provides for how such information may be considered in *ex parte* reexamination, *inter partes* review, and post grant review. The Leahy-Smith America Invents Act also provides for an estoppel that may attach with respect to *ex parte* reexamination based on an *inter partes* review or post grant review proceeding. The Office is revising the rules of practice to implement these post-patent provisions, as well as other miscellaneous provisions of the Leahy-Smith America Invents Act.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before March 5, 2012.

ADDRESSES: Comments should be sent by electronic mail addressed to: *post_patent_provisions@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, marked to the attention of

Kenneth M. Schor, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Schor, Senior Legal Advisor ((571) 272–7710), or Joseph F. Weiss, Jr., Legal Advisor ((571) 272–7759), Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: Section 6 of the Leahy-Smith America Invents Act replaces the current *inter partes* reexamination proceedings with *inter partes* review proceedings, and creates new post grant review proceedings. *See* Public Law 112–29, 125 Stat. 284 (2011). Section 6 of the Leahy-Smith America Invents Act also provides for an estoppel that may attach with respect to *ex parte* reexamination based on an *inter partes* review or post grant review proceeding. The Office is proposing to revise the rules of practice in title 37 of the Code of Federal Regulations (CFR) to implement these post-patent provisions, along with changes in nomenclature pertaining to the renaming of the ''Board of Patent Appeals and Interferences'' as the ''Patent Trial and Appeal Board'' and the replacement of references to interference proceedings with references to derivation proceedings. The post grant review, *inter partes* review, and derivation provisions of sections 3 and 6 of the Leahy-Smith America Invents Act will be implemented by separate rulemakings.

I. Background

Section 6(g) of the Leahy-Smith America Invents Act amends 35 U.S.C. 301 to expand the information that can be submitted in the file of an issued patent by including written statements made by a patent owner before a Federal court or the Office regarding the scope of any claim of the patent. The provision limits the Office's use of such written statements to determining the meaning of a patent claim in *ex parte* reexamination proceedings that have already been ordered and in *inter partes* review and post grant review proceedings that have been instituted. This provision is effective on September 16, 2012.

Section 6(a) and (d) of the Leahy-Smith American Invents Act also contains provisions in new 35 U.S.C. 315(e)(1) and 35 U.S.C. 325(e)(1) for estopping a third party requester from filing a request for *ex parte* reexamination, in certain instances where the third party requester filed a petition for *inter partes* review or post grant review and a final written decision under 35 U.S.C. 318(a) or 35 U.S.C. 328(a) has been issued. In addition, a third party requester may not maintain an *ex parte* reexamination if the estoppel provisions are met during the pendency of the *ex parte* reexamination proceeding. The estoppel provisions apply to the real party(ies) in interest of the *inter partes* review or *post grant* review petitioner and any privy of such a petitioner. This provision is effective on September 16, 2012.

In view of the estoppel provisions, the Office needs to be aware of any final written decision in an *inter partes* review or *post grant* review regarding the patentability of claims. Current § 1.565(a) requires the patent owner to ''inform the Office of any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissues, *ex parte* reexaminations, *inter partes* reexaminations, or litigation and the results of such proceedings.'' Because current § 1.565(a) uses open language to provide a non-exhaustive listing of proceedings that patent owner must inform the Office about, the current rule will include *inter partes* review and *post grant* review proceedings, once they become effective. In addition, the third party requester (to whom the *inter partes* review or *post grant* review estoppel statutes are directed) may inform the Office of a final written decision in an *inter partes* review or post grant review of the patent subject to the *ex parte* reexamination by filing a ''Notification of Existence of Prior or Concurrent Proceedings and Decisions Thereon'' pursuant to *Manual of Patent Examining Procedure* (MPEP) § 2282 (8th ed. 2001) (Rev. 8, July 2010). MPEP § 2282 provides that ''in order to ensure a complete file, with updated status information regarding prior or concurrent proceedings regarding the patent under reexamination, the Office will, at any time, accept from *any parties,* for entry into the reexamination file, copies of notices of suits and other proceedings involving the patent and copies of decisions or papers filed in the court from litigations or other proceedings involving the patent.'' [Emphasis added]

Section 6(h)(1) of the Leahy-Smith America Invents Act amends 35 U.S.C. 303 to expressly identify the authority of the Director to initiate reexamination based on patents and publications cited in a prior reexamination request under 35 U.S.C. 302, as well as on those cited under 35 U.S.C. 301 (which was previously expressly authorized). This provision is effective on September 16, 2012.

Section 3(i) of the Leahy-Smith America Invents Act replaces interference proceedings with derivation proceedings; section 3(j) replaces the title ''Board of Patent Appeals and Interferences'' with ''Patent Trial and Appeal Board'' in 35 U.S.C. 134, 145, 146, 154, and 305; Section 6(a) replaces *inter partes* reexamination with *inter partes* review of a patent; Section 6(d) provides for post-grant review of patents; and Section 7 amends 35 U.S.C. 6(b) to define the duties of the Patent Trial and Appeal Board.

II. Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

The undesignated center heading before § 1.501: It is proposed that the undesignated center heading be revised to read ''Citation of prior art and written statements.''

Section 1.501: Proposed § 1.501 is rewritten to reflect the amendment to 35 U.S.C. 301 by section 6(g)(1) of the Leahy-Smith America Invents Act. New 35 U.S.C. 301(a)(2) would permit a submission under 35 U.S.C. 301 and 1.501 to contain, in addition to prior art

(currently provided for in § 1.501), ''statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent'' (claim scope statements of the patent owner). Proposed § 1.501 provides that a submission can include prior art and claim scope statements of the patent owner. The term ''Federal court'' in 35 U.S.C. 301(a)(2) is understood to also include the United States Court of International Trade.

Section 1.501(a): Proposed § 1.501(a)(1), like current § 1.501(a), provides for submission to the Office of prior art directed to patents or printed publications allegedly bearing on the patentability of any claim of a particular patent. Section 1.501(a)(2) newly permits submission of statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a patent (claim scope statements). Any statement submitted under this paragraph must be accompanied by any other documents, pleadings, or evidence from the proceeding in which the statement was filed that address the statement; and the statement and accompanying information under this paragraph must be submitted in redacted form to exclude information subject to an applicable protective order. For example, a third party may submit a deposition of the patent owner occurring during the course of the Federal court proceeding where the patent owner discusses the scope of a patent claim. A party submitting any submission that includes § 1.501(a)(2) information should also consider providing the following information to assist the Office in identifying the proceeding where the patent owner claim scope statement was made: (1) The forum in which the statement was made (the specific Federal court or the Office); (2) the Federal court or Office proceeding designation (case citation or numerical designation); (3) the status of the proceeding; (4) the relationship of the proceeding to the patent in which the submission is being made; (5) an identification of the specific papers of the proceeding containing the statement of the patent owner; and (6) an identification of the portion(s) of the papers relevant to the written statement being asserted to constitute a statement of the patent owner under 35 U.S.C. 301(a)(2). Any patent owner statement regarding the scope of any claim of a particular patent made outside of a Federal court or Office proceeding is not a written statement eligible for submission under 35 U.S.C. 301(a)(2), even though it may be later entered into a Federal court or Office proceeding by a party other than the patent owner. *See* H.R. Rep. No. 112–98, Part 1, at page 46 (2011) (''[t]his addition will counteract the ability of patent owners to offer differing interpretations of prior art in different proceedings'').

Section 1.501(b): Proposed § 1.501(b)(1) is directed to the 35 U.S.C. 301(b) requirement that the submission include an explanation ''in writing [of] the pertinency and manner of applying the prior art or written statements'' to at least one patent claim. Proposed § 1.501(b)(1) requires an explanation as to how the information in the submission is pertinent to the claim(s) of the patent and how it is applied to each of those claims. In some instances, a combination of prior art and written statements may be cited, while in other situations only prior art or written statements may be cited. In either situation, an explanation as to how the cited information applies to those specific claims must be included with the submission of patent owner statements under 35 U.S.C. 301(a)(2). Section 1.501(b)(1) requires an explanation of the additional information required by 35 U.S.C. 301(c) (as a result of the Leahy-Smith America Invents Act), because the additional information addresses and provides context to the written statement of the patent owner; thus, it provides an additional explanation as to how the cited information is pertinent to the claim(s).

Proposed § 1.501(b)(2) is directed to the substance of the second sentence of current § 1.501(a), which provides regulatory authorization for a patent owner submitter to include an explanation of how the claims differ from the prior art submitted. Proposed § 1.501(b)(2) simply adds statements of patent owner under 35 U.S.C. 301(a)(2) to the current regulatory authorization.

Section 1.501(c): Proposed § 1.501(c) restates the last sentence of existing § 1.501(a) directed to the timing for a submission under §§ 1.502 and 1.902 when there is a reexamination proceeding pending for the patent in which the submission is made. Pursuant to current §§ 1.502 and 1.902, entry (into the official patent file) of a proper submission that is made after the date of an order to reexamine will be delayed (with certain exceptions specified in §§ 1.502 and 1.902) until the reexamination proceeding has been concluded by the issuance and publication of a reexamination certificate. This prevents harassment of the patent owner by frequent submissions of prior art made during a reexamination proceeding, as well as unwarranted interruption and delay of the reexamination proceeding, which would be contrary to the mandate under 35 U.S.C. 305 and 35 U.S.C. 314(c) that all reexamination proceedings are to be ''conducted with special dispatch within the Office.''

Section 1.501(d): Proposed § 1.501(d) restates existing § 1.501(b), to permit the person making the submission to exclude his or her identity from the patent file by anonymously filing the submission.

Section 1.501(e): Proposed § 1.501(e) requires that a submission made under § 1.501 must reflect that a copy of the submission has been served upon the patent owner at the correspondence address of record in the patent, and that service was carried out in accordance with § 1.248. Service is required to provide notice to the patent owner of the submission. The presence of a certificate of service compliant with § 1.248(b) is *prima facie* evidence of compliance with § 1.501(e). If service upon patent owner is unsuccessful, the submission must include proof of a *bona fide* attempt to serve. Proof of a *bona fide* attempt to serve must include a statement of facts with an explanation of the inability to serve the submission upon patent owner, along with all supporting evidence of the attempt of service. The statement of facts must be signed by a person having firsthand knowledge of the facts recited, regarding unsuccessful service. The statement of facts should include the steps taken to locate and serve the patent owner. A statement of facts which provides a mere conclusion or assertion of unsuccessful service will not satisfy this requirement. Copies of documentary proof such as certified/registered mail receipts, cover letters, telegrams or other forms of evidence that support a finding that the patent owner could not be served should be made part of the statement of facts. A submission will not be entered into the patent's Image File Wrapper (IFW) if it does not include either proof of service compliant with § 1.248(b) or a sufficient explanation and proof of a *bona fide* attempt of service, and if such a submission is inadvertently entered, it will be expunged. Where a submission complies with the rule, all information included in the submission will be made of record in the IFW of the patent. A best practice for patent owners is to regularly monitor the IFW record of their patents in the event that a third party was unsuccessful in serving the patent owner at the correspondence

address of record. Such regular monitoring allows a patent owner to be aware of all information added to its patent files.

Section 1.501(f): Proposed § 1.501(f) limits the use of statements of the patent owner and accompanying information submitted under § 1.501(a)(2) to what is provided for in 35 U.S.C. 301(d). Thus, statements of the patent owner and accompanying information submitted under paragraph (a)(2) may only be used for determination of the proper meaning of a patent claim in: (1) An *ex parte* reexamination proceeding that has been ordered pursuant to 35 U.S.C. 304; (2) an *inter partes* review proceeding that has been instituted pursuant to 35 U.S.C. 314; and (3) a post grant review proceeding that has been instituted pursuant to 35 U.S.C. 324. Proposed § 1.501(f) follows from new 35 U.S.C. 301(d), which provides that ''a written statement submitted pursuant to subsection (a)(2)'' ''shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324.'' The reference to 35 U.S.C. 314 is understood to apply to *inter partes* review, and not to *inter partes* reexamination, because *inter partes* reexamination is being replaced by *inter partes* review on the date that 35 U.S.C. 301(d) becomes effective (*i.e.,* September 16, 2012). While *inter partes* reexamination proceedings already ordered will continue after September 16, 2012, 35 U.S.C. 314 is understood not to apply to such proceedings.

Section 1.510: Proposed § 1.510(b)(2) is revised, and new §§ 1.510(b)(6) and (b)(7) are added to implement provisions of the Leahy-Smith America Invents Act. Section 1.510(b)(2) is revised to require that a request for reexamination identify every claim for which reexamination is requested, and for any statement of the patent owner submitted pursuant to § 1.501(a)(2) which is relied upon in the detailed explanation, explain how that statement is being used to determine the proper meaning of a patent claim in connection with prior art applied to that claim. New 35 U.S.C. 301(d) provides that a statement of the patent owner, pursuant to § 1.501(a)(2), may be relied upon in the *ex parte* reexamination proceeding only after reexamination has been ordered. In order to comply with the requirement of 35 U.S.C. 302 that the ''request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested,'' the ''detailed explanation'' provided in the request (pursuant to § 1.510(b)(2)) must explain how each § 1.501(a)(2) statement is being used to determine the proper meaning of a patent claim in connection with the applied prior art. This must be explained for each claim for which the § 1.501(a)(2) statement is being used in the request, and the explanation will be considered by the Office during the examination stage, if reexamination is ordered. At the order stage, the Office will use the broadest reasonable interpretation of the claims, without consideration to any § 1.501(a)(2) statement relied upon in the detailed explanation of a request.

New § 1.510(b)(6) requires that the request contain a certification that the statutory estoppel provisions of *inter partes* review and post grant review do not bar the third party from requesting *ex parte* reexamination. To complement this revision, § 1.510(b)(7) requires that the request contain, as part of the certification, a statement identifying the real party(ies) in interest to the extent necessary to determine whether an *inter partes* review or post grant review filed subsequent to an *ex parte* reexamination bars the third party from maintaining a pending *ex parte* reexamination. An *ex parte* reexamination requester has the option to remain anonymous. In order to do so, the requester must: (1) Submit the statement identifying the real party(ies) in interest as a separate paper; (2) title the paper as a statement identifying the real party(ies) in interest; (3) request in the paper that the Office to retain the paper in confidence by sealing it; and (4) include, in a clear and conspicuous manner, an appropriate instructional label designating the statement as a non-public submission, *e.g.,* NOT OPEN TO THE PUBLIC FOR OFFICE USE ONLY. The Office will then maintain the real party(ies) in interest statement as a sealed, non-public submission.

The estoppel provisions of *inter partes* review and post grant review are provided in new 35 U.S.C. 315(e)(1) and 325(e)(1), respectively. These estoppel provisions bar a request for *ex parte* reexamination (or maintenance of an *ex parte* reexamination) by a third party requester, the requester's real party(ies) in interest, or a privy, where the requester petitioned for an *inter partes* review or post grant review of a claim in the patent that resulted in a final written decision with respect to that claim on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review or post grant review. The certification and identification in new §§ 1.510(b)(6) and 1.510(b)(7) are consistent with the practice of real party(ies) in interest identification certification used for existing *inter partes* reexamination. As was the case for implementation of §§ 1.915(b)(7) and 1.915(b)(8) for *inter partes* reexamination, the certification and identification to be implemented via new §§ 1.510(b)(6) and 1.510(b)(7) address Congress's desire to prevent harassment of the patent owner by third parties. *See* H.R. Rep. No. 112–98 (Part 1), at 48.

Section 1.515: Section 1.515 is revised to add: ''A statement pursuant to § 1.501(a)(2) will not be considered by the examiner in the examiner's determination on the request.'' New 35 U.S.C. 301(d) states: ''A written statement submitted pursuant to subsection (a)(2), and additional information submitted pursuant to subsection (c) [of 35 U.S.C. 301], shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered * * * pursuant to section 304.'' The Office interprets 35 U.S.C. 301(d) as prohibiting it from considering a § 1.501(a)(2) written statement when making the determination of whether to order *ex parte* reexamination under 35 U.S.C. 303. *See also* H.R. Rep. No. 112–98, Part 1, at page 46 (2011). In making the § 1.515(a) determination of whether to order *ex parte* reexamination, the Office will generally (except in the rare case of an expired patent), give the claims the broadest reasonable interpretation consistent with the specification (*See* In *re Yamamoto,* 740 F.2d 1569, 222 USPQ 934 (Fed. Cir. 1984)). Consideration of the evidentiary weight to be accorded to a 35 U.S.C. 301(a)(2) statement (as to the meaning of the claims with respect to the ultimate patentability decision) will not be given unless reexamination is ordered. If reexamination is ordered, the patent owner statements submitted pursuant to 35 U.S.C. 301(a)(2) will be considered to the fullest extent possible when determining the scope of any claims in the patent which are subject to reexamination.

Section 1.552: § 1.552 is rewritten to include new subsection § 1.552(d) to reflect the amendment of 35 U.S.C. 301 by section 6(g)(1) of the Leahy-Smith America Invents Act. Proposed § 1.552(d) states: ''Any statement of the patent owner and any accompanying information submitted pursuant to § 1.501(a)(2) which is of record in the patent being reexamined (which includes any reexamination files for the patent) may be used after a reexamination proceeding has been ordered to determine the proper meaning of a patent claim when applying patents or printed

publications.'' New 35 U.S.C. 301(a)(2) permits a submission under 35 U.S.C. 301 to contain ''statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.'' Thus, written statements cited under new 35 U.S.C. 301(a)(2) may be considered after an *ex parte* reexamination proceeding has been ordered, but not in making the determination of whether to order *ex parte* reexamination under 35 U.S.C. 303. *See* 35 U.S.C. 301(d). *See also* H.R. Rep. No. 112–98, Part 1, at page 46 (2011).

The Office also proposes to change the nomenclature in title 37 CFR to reflect renaming the ''Board of Patent Appeals and Interferences'' as the ''Patent Trial and Appeal Board,'' including changes for the new trial proceedings of *inter partes* review, post grant review, and derivation. Specifically, the Office proposes to change ''Board of Patent Appeals and Interferences'' to the ''Patent Trial and Appeal Board'' in 37 CFR parts 1, 11, and 41 (in §§ 1.1(a)(1)(ii), 1.4(a)(2), 1.6(d)(9), 1.8(a)(2)(i)(C), 1.9(g), 1.17(b), 1.36(b), 1.48(j), 1.136(a)(1)(iv), 1.136(a)(2), 1.136(b), 1.181(a)(1), 1.181(a)(3), 1.191, 1.197(a), 1.198, 1.248(c), 1.294(b), 1.301, 1.303(a), 1.304(a)(1), 1.304(a)(1)(ii), 1.324(d), 1.550(a), 1.701(a)(3), 1.701(c)(3), 1.702(a)(3), 1.702(b)(4), 1.702(e), 1.703(a)(5), 1.703(b)(4), 1.703(e), 1.704(c)(9), 1.937(a), 1.959, 1.979(a), 1.979(b), 1.981, 1.983(a), 1.983(c), 1.983(d), 1.983(f), 11.5(b)(1), 11.6(d), 41.1(a), 41.2, 41.10(a)–(c), and 41.77(a), and in the title of part 41). The Office likewise proposes to add specific references to trial proceedings before the Patent Trial and Appeal Board to §§ 1.5(c), 1.6(d), 1.6(d)(9), 1.11(e), 1.136(a)(2), 1.136(b), 1.178(b), 1.248(c), 1.322(a)(3), 1.324(a), 1.324(d), 1.565(a), 1.565(e), 1.985(a), 1.985(b), 1.993, 10.1(s), 11.10(b)(3)(iii), and 11.57(b)(1)(i). Finally, the Office proposes to add specific references to derivation proceedings to §§ 1.48(j), 1.55(a)(3)(i), 1.55(a)(4)(i)(A), 1.103(g), 1.136(a)(1)(v), 1.313(b)(4), 1.701(a)(1), 1.701(c)(1)(i–ii), 1.701(c)(2)(iii), 1.702(b)(2), 1.702(c), 1.703(b)(2)(i–ii), 1.703(b)(3)(iii), 1.703(c)(1–2), 1.703(d)(3), and 5.3(b).

III. Rulemaking Considerations

A. *Administrative Procedure Act (APA):* This proposed rule revises existing rules governing prior art citations and patent owner statements in a patent file and *ex parte* reexamination to implement the following provisions of sections 3 and 6 of the Leahy-Smith America Invents Act: (1) Section 6(g) which amends 35 U.S.C. 301, to expand the scope of information that can be submitted in the file of an issued patent; (2) the provisions of sections 6(a) and 6(d) (which newly enact *inter partes* review and post grant review, respectively) that provide for estoppels effective as to proceedings before the Office, including but not limited to reexamination; and (3) sections 3(j) and 7 which change the title ''Board of Patent Appeals and Interferences'' to ''Patent Trial and Appeal Board,'' and change references to interference proceedings to derivation proceedings.

Therefore, the changes in this proposed rule are merely procedural and/or interpretive. *See Bachow Communs., Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 242, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law) and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. *Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. *Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. *Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. *Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. *Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. *Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. *Executive Order 12630 (Taking of Private Property):* This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. *Unfunded Mandates Reform Act of 1995:* The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. *National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. *Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. The proposed collection will be available at OMB's Information Collection Review Web site (*http://www.reginfo.gov/public/do/PRAMain*).

Needs and Uses: This information collection is necessary so that the public may file, in a patent, submissions of patents and printed publications, and statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. The public may use this information to aid in ascertaining the patentability and/or scope of the claims of the patent.

Title of Collection: Post Patent Public Submissions.

OMB Control Number: 0651–00xx.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 1,000 responses per year.

Estimated Time Per Response: The Office estimates that the responses in this collection will take the public 10 hours.

Estimated Total Annual Respondent Burden Hours: 10,000 hours per year.

Estimated Total Annual Respondent Cost Burden: $3,400,000 per year.

The Office is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Please send comments on or before March 5, 2012 to Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

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

List of Subjects in *37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses, and Biologics.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. The undesignated center heading before § 1.501 is revised to read as follows:

Citation of Prior Art and Written Statements

3. Section 1.501 is revised to read as follows:

§ 1.501 Citation of prior art and written statements in patent files.

(a) *Information content of submission:* At any time during the period of enforceability of a patent, any person may file a written submission with the Office under this section, which is directed to the following information:

(1) Prior art consisting of patents or printed publications which the person making the submission states to have a bearing on the patentability of any claim of the patent; or

(2) Statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. Any statement submitted under this paragraph must be accompanied by any other documents, pleadings, or evidence from the proceeding in which the statement was filed that address the written statement, and such statement and accompanying

information under this paragraph must be submitted in redacted form to exclude information subject to an applicable protective order. Submission of a statement of the patent owner made outside of a Federal court or Office proceeding and later filed for inclusion in a Federal court or Office proceeding is not permitted by this section, and such a submission will not be entered into the patent file.

(b) *Explanation included:* A submission pursuant to paragraph (a) of this section:

(1) Must explain in writing the pertinence and manner of applying any prior art submitted under paragraph (a)(1) of this section and any written statement and accompanying information submitted under paragraph (a)(2) of this section to at least one claim of the patent, in order for the submission to become a part of the official file of the patent; and

(2) May, if the submission is made by the patent owner, include an explanation of how the claims differ from any prior art submitted under paragraph (a)(1) of this section or any written statements and accompanying information submitted under paragraph (a)(2) of this section.

(c) *Reexamination pending:* If a reexamination proceeding has been requested and is pending for the patent in which the submission is filed, entry of the submission into the official file of the patent is subject to the provisions of §§ 1.502 and 1.902.

(d) *Identity:* If the person making the submission wishes his or her identity to be excluded from the patent file and kept confidential, the submission papers must be submitted anonymously without any identification of the person making the submission.

(e) *Service of the submission:* A submission made under this section must reflect that a copy of the submission has been served upon the patent owner at the correspondence address of record in the patent, in accordance with § 1.248, or that a *bona fide* attempt of service was made. A submission that fails to include either proof of service or a sufficient explanation and proof of a *bona fide* attempt of service will not be entered into the patent file, and will be expunged if inadvertently entered.

(f) *Consideration of statements of patent owner:* Statements of the patent owner and accompanying information submitted under paragraph (a)(2) of this section shall not be considered by the Office for any purpose other than as provided for in 35 U.S.C. 301(d) . If reexamination is ordered, the patent owner statements submitted pursuant to section 301(a)(2) will be considered when determining the scope of any claims in the patent subject to reexamination.

4. Section 1.510 is amended by revising paragraph (b)(2), and adding new paragraphs (b)(6) and (b)(7), to read as follows:

§ 1.510 Request for ex parte reexamination.

* * * * *

(b) * * *

(2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. For each statement and accompanying information of the patent owner submitted pursuant to § 1.501(a)(2) which is relied upon in the detailed explanation, the request must explain how that statement is being used to determine the proper meaning of a patent claim in connection with the prior art applied to that claim and how each relevant claim is being interpreted. If appropriate, the party requesting reexamination may also point out how claims distinguish over cited prior art.

* * * * *

(6) A certification that the statutory estoppel provisions of both *inter partes* review (35 U.S.C. 315(e)(1)) and post grant review (35 U.S.C. 325(e)(1)) do not prohibit the *ex parte* reexamination.

(7) A statement identifying the real party(ies) in interest to the extent necessary to determine whether any *inter partes* review or post grant review filed subsequent to an *ex parte* reexamination bars a pending *ex parte* reexamination filed by the real party(ies) in interest or its privy from being maintained.

5. Section 1.515 is amended by revising paragraph (a) to read as follows:

§ 1.515 Determination of the request for ex parte reexamination.

(a) Within three months following the filing date of a request for an *ex parte* reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. A statement and any accompanying information submitted pursuant to § 1.501(a)(2) will not be considered by the examiner in the examiner's determination on the request. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address provided for in § 1.33(c) and to the person requesting reexamination.

* * * * *

6. Section 1.552 is amended by adding new paragraph (d) to read as follows:

§ 1.552 Scope of reexamination in ex parte reexamination proceedings.

* * * * *

(d) Any statement of the patent owner and any accompanying information submitted pursuant to § 1.501(a)(2) which is of record in the patent being reexamined (which includes any reexamination files for the patent) may be used after a reexamination proceeding has been ordered to determine the proper meaning of a patent claim when applying patents or printed publications.

Dated: December 30, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–33813 Filed 1–4–12; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0073]

RIN 0651–AC67

Changes To Implement the Preissuance Submissions by Third Parties Provision of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing changes to the rules of patent practice to implement the preissuance submissions by third parties provision of the Leahy-Smith America Invents Act. This provision provides a mechanism for third parties to contribute to the quality of issued patents by submitting to the Office, for consideration and inclusion in the record of patent applications, any patents, published patent applications, or other printed publications of potential relevance to the examination of the applications. A preissuance submission may be made in any non-

provisional utility, design, and plant application, as well as in any continuing or reissue application. A third-party preissuance submission must include a concise description of the asserted relevance of each document submitted and be submitted within a certain statutorily specified time period. The third party must submit a fee as prescribed by the Director and a statement that the submission complies with all of the statutory requirements. The third-party preissuance submission provision of the Leahy-Smith America Invents Act is effective on September 16, 2012, and applies to any application filed before, on, or after September 16, 2012.

Comment Deadline: Written comments must be received on or before March 5, 2012.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: preissuance_submissions@uspto.gov. Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313 1450, marked to the attention of Nicole D. Haines, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Nicole D. Haines, Legal Advisor ((571) 272 7717), Pinchus M. Laufer, Senior Legal Advisor ((571) 272–7726), or Hiram H. Bernstein, Senior Legal Advisor ((571) 272–7707), Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284 (2011). This notice proposes changes to the rules of practice to implement Section 8 of the Leahy-Smith America Invents Act, which provides a mechanism for third parties to submit to the Office, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

Section 8 of the Leahy-Smith America Invents Act amends 35 U.S.C. 122 by adding 35 U.S.C. 122(e), which enumerates certain conditions that apply to a third-party preissuance submission to the Office in a patent application. Pursuant to 35 U.S.C. 122(e), third-party preissuance submissions of patents, published patent applications, or other printed publications must be made in patent applications before the earlier of: (a) The date a notice of allowance under 35 U.S.C. 151 is given or mailed in the application; or (b) the later of (i) six months after the date on which the application is first published under 35 U.S.C. 122 by the Office, or (ii) the date of the first rejection under 35 U.S.C. 132 of any claim by the examiner during the examination of the application. 35 U.S.C. 122(e) also requires a concise description of the asserted relevance of each document submitted, a fee as prescribed by the Director, and a statement by the person making the third-party preissuance submission that the submission was made in compliance with 35 U.S.C. 122(e). A preissuance submission by a third party may be made in any non-provisional utility, design, or plant application, as well as in any continuing or reissue application.

The preissuance submissions by third parties provision of the Leahy-Smith America Invents Act takes effect on September 16, 2012. This provision applies to any patent application filed before, on, or after September 16, 2012.

The Office plans to permit third-party preissuance submissions to be filed via the Office electronic filing system (EFS–Web). However, third-party preissuance submissions, whether submitted in paper or electronically via EFS–Web, would not be automatically entered into the electronic image file wrapper (IFW) for an application. Instead, preissuance submissions submitted by third parties would be reviewed to determine compliance with 35 U.S.C. 122(e) and new 37 CFR 1.290 before being entered into the IFW. Third parties filing preissuance submissions electronically via EFS–Web, will receive immediate, electronic acknowledgment of the Office's receipt of the submission, instead of waiting for the Office to mail a return postcard.

The current EFS–Web Legal Framework prohibits third-party submissions under 37 CFR 1.99 and 37 CFR 1.291 in patent applications because electronically filed documents are instantly loaded into the IFW. *See Legal Framework for Electronic Filing System—Web (EFS–Web),* 74 FR 55200, 55202, 55206–7 (October 27, 2009). Because third-party preissuance submissions would be permitted to be filed electronically under the proposed rule, the Office intends to protect applicants by establishing procedures to determine whether a third-party preissuance submission is in compliance with the requirements of new 37 CFR 1.290 before entering the submission into the IFW of an application or making the submission available to an examiner for consideration. The Office intends to complete such determination, for both paper and electronic submissions, promptly following receipt of the submission so that compliant preissuance submissions would be quickly entered into the IFW and made available to the examiner for consideration. Non-compliant third-party preissuance submissions would not be entered into the IFW of an application or considered and would be discarded. Also, no refund of the required fees would be provided in the event a preissuance submission is determined to be non-compliant. If an electronic mail message address is provided with a third party preissuance submission, the Office may attempt to notify the third party submitter of such non-compliance; however, the statutory time period for making a preissuance submission would not be tolled by the initial non-compliant submission.

The Office does not plan to require that the third party serve the applicant with a copy of the third-party's preissuance submission. Nor does the

Office intend to directly notify the applicant upon entry of a third-party preissuance submission. However, the contents of a compliant third-party preissuance submission will be made available to the applicant via its entry in the IFW of the patent application. By not requiring service of third-party preissuance submissions on the applicant, the Office is underscoring that such third-party submissions will not create a duty on the part of the applicant to independently file the submitted documents with the Office in an information disclosure statement (IDS). Additionally, challenges regarding whether service of a third-party preissuance submission was proper could negatively impact the pendency of the application.

35 U.S.C. 122(e) does not limit third-party preissuance submissions to pending applications. A third-party preissuance submission made within the statutory time period, and otherwise compliant, would be entered even if the application to which the submission is directed has been abandoned. An examiner would not consider such preissuance submission unless the application resumes a pending status (*e.g.,* the application is revived, the notice of abandonment is withdrawn, *etc.*). The abandonment of an application will not, however, toll the statutory time period for making a preissuance submission. Additionally, a third-party preissuance submission made within the statutory time period, and otherwise compliant, would be entered even if the application to which the submission is directed has not been published.

Compliant third-party preissuance submissions would be considered by the examiner when the examiner next takes up the application for action following the entry of the preissuance submission into the IFW. An examiner would consider the documents and concise descriptions submitted in a compliant third-party preissuance submission in the same manner that the examiner considers information and concise explanations of relevance submitted as part of an IDS. Generally with the next Office action, a copy of the third party's listing of documents, with an indication of which documents were considered by the examiner, would be provided to the applicant. Documents considered by the examiner would be printed on the patent. Accordingly, an applicant would not need to file an IDS to have the same documents that were previously submitted by a third party as part of a compliant preissuance submission considered by the examiner in the application.

The Office plans to have examiners acknowledge in the record of the patent application the examiner's consideration of the documents submitted. This will be done in a manner similar to that of the examiner's consideration of applicant-submitted documents filed as part of an IDS. For example, the examiner would indicate at the bottom of each page of a preissuance submission ''All documents considered except where lined through,'' along with the examiner's electronic initials and the examiner's electronic signature on the final page of the submission. *See, e.g., Manual of Patent Examining Procedure* (MPEP) § 609.05(b) (8th ed. 2001) (Rev. 8, July 2010). Such indication by the examiner placed at the bottom of each page of a preissuance submission would mean that the examiner has considered the listed documents and their accompanying concise descriptions. Striking through a document would mean that the examiner did not consider either the document or its accompanying concise description (*e.g.,* because the document was listed improperly, a copy of the document was not submitted, or a concise description was not provided for that document).

Since it would be advantageous for examiners to have the best art before them prior to issuing the first Office action on the merits, and because a first action allowance in the application could close the time period for making a preissuance submission under 35 U.S.C. 122(e), third parties should consider providing any preissuance submission at the earliest opportunity. Additionally, because highly relevant documents can be obfuscated by voluminous submissions, third parties should limit any preissuance submission to the most relevant documents and should avoid submitting documents that are cumulative in nature. Third parties need not submit documents that are cumulative of each other or that are cumulative of information already under consideration by the Office. Third parties are reminded that 35 U.S.C. 122(e) requires that the documents submitted be ''of potential relevance to the examination of the application'' and that the relevance of each document submitted must be provided in an accompanying concise description.

The Director is proposing to set the fees for third-party preissuance submissions to recover costs to the Office for third-party preissuance submissions to the Office. 35 U.S.C. 122(e) expressly provides for ''such fee as the Director may prescribe.'' The Office is setting fees for third-party preissuance submissions in this rulemaking pursuant to its authority under 35 U.S.C. 41(d)(2), which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials. *See* 35 U.S.C. 41(d)(2). The current rules of practice (37 CFR 1.99) provide for a third-party submission of up to ten documents for the fee set forth in 37 CFR 1.17(p) (currently $180.00). The Office expects the processing costs to the Office for third-party preissuance submissions under new 37 CFR 1.290 to be equivalent to the processing costs to the Office for submissions under 37 CFR 1.99. Accordingly, the Office has determined that the fee set forth in 37 CFR 1.17(p) would also be applicable to third-party preissuance submissions under 37 CFR 1.290 and proposes to require the fee set forth in 37 CFR 1.17(p) for every ten documents, or fraction thereof, listed in each third-party preissuance submission.

The Office proposes to provide an exemption from this fee requirement where a preissuance submission lists three or fewer total documents and is the first preissuance submission submitted in an application by a third party or a party in privity with the third party. The Office is providing this fee exemption for the first preissuance submission in an application by a third party containing three or fewer total documents because the submission of a limited number of documents is more likely to assist in the examination process and thus offset the cost of processing the submission. Moreover, keeping the size of the fee exempted submission to three or fewer total documents will help to focus the attention of third parties on finding and submitting only the most relevant art to the claims at hand. Where one third party takes advantage of the fee exemption in an application, another third party is not precluded from also taking advantage of the fee exemption in the same application provided that the third parties are not in privity with each other.

The Office proposes to implement 35 U.S.C. 122(e) in a new rule 37 CFR 1.290 and to eliminate § 1.99. While current § 1.99 provides for third-party submissions of patents, published patent applications, or printed publications, it does not permit an accompanying concise description of relevance of each document and limits the time period for such submissions to up to two months after the date of the patent application publication, or the

mailing of a notice of allowance, whichever is earlier. By contrast, new 35 U.S.C. 122(e) and proposed 37 CFR 1.290 permit third parties to submit the same types of documents, but with an accompanying concise description of relevance of each document submitted and provide third parties with the same or more time to file preissuance submissions with the Office when compared with current 37 CFR 1.99. Accordingly, the Office proposes to eliminate 37 CFR 1.99 in favor of new 37 CFR 1.290.

The Office also plans to eliminate the public use proceeding provisions of 37 CFR 1.292. Because Section 6 of the Leahy-Smith America Invents Act makes available a post-grant review proceeding in which prior public use may be raised, the pre-grant public use proceeding set forth in 37 CFR 1.292 is no longer considered necessary. Additionally, information on prior public use may be submitted by third parties by way of a protest in a pending application when the requirements of 37 CFR 1.291 have been met, and utilization of 37 CFR 1.291 would promote Office efficiency with respect to treatment of these issues. Requests for a public use proceeding under 37 CFR 1.292 are also very rare. The few public use proceedings conducted each year are a source of considerable delay in the involved applications and seldom lead to the rejection of claims.

In view of the proposed elimination of 37 CFR 1.99 and 37 CFR 1.292, the Office proposes to amend 37 CFR 1.17 to eliminate the document submission fees pertaining to 37 CFR 1.99 and 37 CFR 1.292. The Office also proposes to amend 37 CFR 1.17 to add the document submission fees pertaining to new 37 CFR 1.290.

For ease of compliance, the Office proposes to amend 37 CFR 1.291 to make the requirements for submitting protests against pending patent applications more clear and, where appropriate, more consistent with the proposed requirements of new 37 CFR 1.290.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.99: Section 1.99 is proposed to be removed and reserved. Section 1.99 is unnecessary because proposed § 1.290 provides for third-party preissuance submissions of patents, published patent applications, and other printed publications to the Office for consideration and inclusion in the record of a patent application, with a concise description of the relevance of each document being submitted and within time periods that are the same or greater than those permitted under § 1.99.

Section 1.290: Section 1.290(a) as proposed provides that a third party may submit, for consideration and entry in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application if the submission complies with 35 U.S.C. 122(e) and the requirements of § 1.290, and provides that the submission will not be entered or considered by the Office if the submission is not in compliance with 35 U.S.C. 122(e) and § 1.290. Because § 1.290(a) as proposed requires preissuance submissions be directed to patent applications, the Office would not accept preissuance submissions directed to issued patents. Such submissions should be filed in accordance with § 1.501. Section 1.290(a) as proposed does not require that the application be published. For example, the Office would accept a compliant preissuance submission directed to an application in which a nonpublication request has been filed pursuant to 35 U.S.C. 122(b)(2)(B)(i) and § 1.213. Preissuance submissions under § 1.290 as proposed may be directed to non-provisional utility, design, and plant applications, as well as to continuing and reissue applications.

Also, § 1.290(a) as proposed limits the type of information that may be submitted to patent publications, which include patents and published patent applications, and other printed publications of potential relevance to the examination of a patent application. For example, a submission under § 1.290 could not include unpublished internal documents or other non-patent documents which do not qualify as ''printed publications.'' *See* MPEP § 2128. In the case of a preissuance submission that includes a lengthy document, a third party could submit the relevant portion of the document (*e.g.,* one chapter of a book) in lieu of the entire document where it is practical to do so. Because 35 U.S.C. 122(e) does not limit the type of information that may be submitted to prior art, there is no requirement in § 1.290(a) as proposed that the information submitted be prior art documents in order to be considered by the examiner. Further, in those situations where a third party is asserting that a document submitted is prior art, the third party bears the burden of establishing the date of the document where the date is not apparent from the document regardless whether the document is in paper or electronic format. In such situations, the third party may submit evidence in the form of affidavits, declarations, or other evidence. Such evidence will not be counted toward the document count, unless the document is in the form of a patent document or other printed publication and the document, itself, is listed and submitted for consideration by the examiner.

Section 1.290(b) as proposed sets forth the time periods in which a third party may file a preissuance submission. Under § 1.290(b) as proposed, any third-party submission under this section must be filed before the earlier of: (1) The date a notice of allowance under § 1.311 is given or mailed in the application; or (2) the later of: (i) six months after the date on which the application is first published by the Office under 35 U.S.C. 122(b) and § 1.211, or (ii) the date the first rejection under § 1.104 of any claim by the examiner is given or mailed during the examination of the application.

The time periods provided for in § 1.290(b) are statutory and cannot be waived. Thus, the Office cannot grant any request for extension of the § 1.290(b) time periods. Also, preissuance submissions must be filed before, not on, the dates identified in § 1.290(b)(i), (b)(2)(i), and (b)(2)(ii). A preissuance submission under § 1.290 is filed on its date of receipt in the Office as set forth in § 1.6 (the provisions of § 1.8 do not apply to a preissuance submission under § 1.290). Third-party preissuance submissions that are not timely filed would not be entered or considered and would be discarded.

Proposed § 1.290(b)(2)(i) highlights a distinction in the statutory language of 35 U.S.C. 122(c) and (e) with respect to publication of the application. 35 U.S.C. 122(c) broadly refers to ''publication of the application,'' whereas new 35 U.S.C. 122(e) refers to an application ''first published under section 122 by the Office.'' The § 1.290(b)(2)(i) time period would be initiated only by publications by the Office under 35 U.S.C. 122(b) and § 1.211, and would not be initiated by a publication by the World Intellectual Property Organization (WIPO). Thus, an earlier publication by WIPO of an international application designating the U.S. filed on or after November 29, 2000, would not be considered a publication that would initiate the § 1.290(b)(2)(i) time period for an application which entered the national stage from the international application after compliance with 35 U.S.C. 371. Further, where the Office republishes an application due to material mistake of the Office pursuant to 37 CFR 1.221(b), the date on which the application is

republished will be considered the date the application is ''first published by the Office'' under § 1.290(b)(2)(i).

The proposed new § 1.290(b)(2)(ii) time period would be initiated by the date the first rejection under § 1.104 of any claim by the examiner is given or mailed during the examination of the application. The § 1.290(b)(2)(ii) time period would not be initiated, for example, by a first Office action that only contains a restriction requirement or where the first Office action is an action under *Ex parte Quayle,* 1935 Dec. Comm'r Pat. 11 (1935).

Section 1.290(c) as proposed requires a preissuance submission to be made in writing. For a paper filing, the third party may include a self-addressed postcard with the preissuance submission to receive an acknowledgment by the Office that the preissuance submission has been received. For an electronic filing, the third party will receive immediate, electronic acknowledgment of the Office's receipt of the submission. In either case, the third party will not receive any communications from the Office relating to the submission other than the self-addressed postcard or electronic acknowledgment of receipt. Section 1.290(c) as proposed also requires that the application to which the third-party submission is directed be identified on each page of the submission by application number (*i.e.,* the series code and serial number), except for the copies of the documents that are being submitted pursuant to § 1.290(d)(3). By requiring identification by application number, third-party preissuance submissions could be timely matched with the application file and routed to the examiner.

Section 1.290(d)(1) as proposed provides that any third-party submission under § 1.290 must include a list of the documents being submitted, and the listing must include a heading that identifies the listing as a third-party preissuance submission under § 1.290. Proposed § 1.290(e) also sets forth the requirements for identifying the documents being submitted and listed pursuant to § 1.290(d)(1). The Office proposes to provide a form similar to forms PTO/SB/08A and 08B to assist third parties in preparing the listing of documents in accordance with §§ 1.290(d)(1) and (e) and to ensure that the documents are properly made of record in the application file.

Section 1.290(d)(2) as proposed requires a concise description of the asserted relevance of each listed document. 35 U.S.C. 122(e) requires that each third-party preissuance submission be accompanied by a ''concise description of the asserted relevance of each document submitted.'' The concise description should explain why the respective document has been submitted and how it is of potential relevance to the examination of the application in which the preissuance submission has been filed. Unless there is no concise description provided for a document that is listed, or the concise description is merely a bare statement that the document is relevant and thus does not amount to a meaningful concise description, the Office does not propose to otherwise evaluate the sufficiency of the concise description. It would be a best practice that each concise description point out the relevant pages or lines of the respective document, particularly where the document is lengthy and complex and the third party can identify a highly relevant section, such as a particular figure or paragraph. The third party may present the concise description in a format that would best explain to the examiner the relevance of the accompanying document, such as in a narrative description or a claim chart. Third parties should refrain from submitting a verbose description of relevance not only because the statute calls for a ''concise'' description but also because a focused description is more effective in drawing the examiner's attention to the relevant issues.

Section 1.290(d)(3) as proposed requires submission of a legible copy of each listed document. *See* § 1.98(a)(2) and MPEP § 609.04(a). Where only the relevant portion of a document is listed, the third party could submit only a copy of that portion (*e.g.,* where a particular chapter of a book is listed and not the entire book). When a copy of only a relevant portion of a document is submitted, the third party should also submit copies of pages of the document that provide identifying information (*e.g.,* a copy of the cover, the title page, the copyright information page, *etc.*). Under § 1.290(d)(3) as proposed, a third party need not submit copies of U.S. patents and U.S. patent application publications, unless required by the Office, as such documents are readily accessible to examiners.

Section 1.290(d)(4) as proposed requires an English language translation of all relevant portions of any listed non-English language document to be considered by the examiner.

Section 1.290(d)(5)(i) as proposed requires a statement by the party making the submission that the party is not an individual who has a duty to disclose information with respect to the application (*i.e.,* each individual associated with the filing and prosecution of the patent application) under § 1.56. Such statement is intended to avoid potential misuse of preissuance submissions by applicants (*e.g.,* by employing a third party ''straw man'') to attempt to circumvent the IDS rules.

Section 1.290(d)(5)(ii) as proposed requires a statement by the party making the submission that the submission complies with the requirements of 35 U.S.C. 122(e) and § 1.290. To facilitate compliance by third parties, the Office proposes to provide a form for third-party preissuance submissions under § 1.290 that includes the statements required by §§ 1.290(d)(5)(i) and (ii).

Section 1.290(e) as proposed sets forth the requirements for identifying the documents submitted and listed pursuant to § 1.290(d)(1). Section 1.290(e) requires that U.S. patents and U.S. patent application publications be listed in a separate section from other documents. Separating the listing of U.S. patents and U.S. patent application publications from the listing of other documents would facilitate printing the U.S. patents and U.S. patent application publications considered by the examiner in a third-party preissuance submission on the face of the patent.

Section 1.290(e)(1) as proposed requires that each U.S. patent be identified by patent number, first named inventor, and issue date. Section 1.290(e)(2) as proposed requires that each U.S. patent application publication be identified by patent application publication number, first named inventor, and publication date. Section 1.290(e)(3) as proposed requires that each foreign patent or published foreign patent application be identified by the country or patent office that issued the patent or published the application, an appropriate document number, first named inventor, and the publication date indicated on the patent or published application. Requiring U.S. and foreign patent and published patent application documents to be identified by the first named inventor should aid in identifying the listed documents in the event the application number, publication number, or other appropriate document number data is inadvertently transposed or otherwise misidentified. Section 1.290(e)(4) as proposed requires that each non-patent publication be identified by publisher, author, title, pages being submitted, publication date, and place of publication, where such information is available. The qualifier ''where available'' applies to each item of information specified in § 1.290(e)(4). Thus, if an item of information is not available for a particular non-patent

publication (*e.g.,* publisher information), the third party need not provide that information, and the citation of the non-patent publication would not be improper as a result of not providing that information. Further, § 1.290(e)(4) as proposed does not preclude additional information not specified in § 1.290(e)(4) from being provided (*e.g.,* journal title and volume/issue information for a journal article). Section 1.290(e)(4) as proposed also provides that the third party bears the burden of establishing the date of a non-patent publication where the non-patent publication is asserted by the third party to be prior art and the date is not apparent from the document, regardless whether the document is in paper or electronic form.

Section 1.290(f) as proposed requires payment of the fee set forth in § 1.17(p) for every ten documents or fraction thereof being submitted, except where the submission is accompanied by the statement set forth in proposed § 1.290(g). The Office proposes to determine the document count based on the § 1.290(d)(1) listing of documents. Thus, if a document is listed but a copy of the document is not submitted, the listed document would be counted toward the document count. If a copy of a document is submitted but the document is not listed, the document would not be counted or considered and would be discarded. A third party would be permitted to cite less than an entire publication in the § 1.290(d)(1) listing, which would be counted as one document. Further, while a third party would be permitted to cite different publications that are all available from the same electronic source, such as a Web site, each such publication would be counted as a separate document.

Section 1.290(g) as proposed provides an exemption from the § 1.290(f) fee requirement where a preissuance submission listing three or fewer total documents is the first preissuance submission submitted in an application by a third party, or a party in privity with the third party. Where one third party takes advantage of the fee exemption in an application, another third party is not precluded from also taking advantage of the fee exemption in the same application as long as the third parties are not in privity with each other. For example, applying the current 37 CFR 1.17(p) fee of $180.00 in accordance with proposed §§ 1.290(f) and (g): (1) No fee would be required for the first preissuance submission by a third party containing three or fewer total documents; (2) a $180.00 fee would be required for the first preissuance submission by a third party containing more than three, but ten or fewer total documents: and (3) a $360.00 fee would be required for the first preissuance submission by a third party containing more than ten, but twenty or fewer total documents. For a second or subsequent preissuance submission by the same third party: (1) A $180.00 fee would be required where the second or subsequent preissuance submission by the third party contains ten or fewer total documents; and (2) a $360.00 fee would be required where the second or subsequent preissuance submission by the same third party contains more than ten, but twenty or fewer total documents.

To implement the fee exemption in § 1.290(g) and avoid potential misuse of such exemption, the Office proposes to require that exemption-eligible preissuance submissions be accompanied by a statement of the third party that, to the knowledge of the person signing the statement after making reasonable inquiry, the submission is the first and only preissuance submission submitted in the application by the third party or a party in privity with the third party. To preclude a third party from making multiple preissuance submissions in the same application on the same day and asserting that each such submission is the first preissuance submission being submitted in the application by the third party, the § 1.290(g) statement would require that the submission be the ''first and only'' preissuance submission. This statement would not, however, preclude the third party from making more than one preissuance submission in an application, where the need for the subsequent submissions was not known at the time the earlier submission including the § 1.290(g) statement was filed with the Office. Such additional submissions would not be exempt from the § 1.290(f) fee requirement.

The Office does not propose to entertain challenges to the accuracy of such third-party statements because, pursuant to § 11.18(b), whoever knowingly and willfully makes any false, fictitious, or fraudulent statements or representations to the Office shall be subject to the penalties set forth under 18 U.S.C. 1001. Section 11.18(b) applies to any paper presented to the Office, whether by a practitioner or non-practitioner.

Additionally, the Office does not propose to require an explicit identification of a real party in interest because such identification might discourage some third parties from making a preissuance submission or invite challenges based on allegations of misidentification.

Section 1.290(h) as proposed provides that in the absence of a request by the Office, an applicant has no duty to, and need not, reply to a submission under § 1.290. Likewise, because the prosecution of a patent application is an *ex parte* proceeding, no further response from a third party with respect to an examiner's treatment of the third party's preissuance submission would be permitted or considered.

Section 1.290(i) as proposed provides that the provisions of § 1.8 do not apply to the time periods set forth in § 1.290.

Section 1.291: The Office proposes to amend portions of § 1.291 for clarity and also for consistency with new 35 U.S.C. 122(e) and proposed § 1.290.

Section 1.291(b) is proposed to be amended to clarify that the application publication date is the date the application was published under 35 U.S.C. 122(b), and § 1.211 and is also proposed to be amended by including ''given or'' before ''mailed'' to provide for electronic notification of the notice of allowance (*i.e.,* e-Office action).

Section 1.291(b)(1) is proposed to be amended to more clearly define the time period for submitting protests under § 1.291 that are accompanied by applicant consent. Specifically, § 1.291(b)(1) is proposed to be amended to provide that, if a protest is accompanied by the written consent of the applicant, the protest will be considered if the protest is filed before a notice of allowance under § 1.311 is given or mailed in the application. This amendment would provide a definite standard for both the Office and third parties and would give more certainty as to when a protest under § 1.291 that is accompanied by applicant consent would or would not be accepted by the Office. Moreover, it is reasonable that the time period for submission ends when a notice of allowance is given or mailed in the application in view of the current publication process.

Under the current publication process, final electronic capture of information to be printed in a patent will begin as soon as an allowed application is received in the Office of Patent Publication, immediately after the notice of allowance has been given or mailed. *See* MPEP § 1309.

Section 1.291(c)(1) is proposed to be amended to set forth the requirements for identifying the information being submitted and listed, consistent with proposed § 1.290(e). Section 1.291(c)(1)(i) as proposed to be amended requires that each U.S. patent be identified by patent number, first named inventor, and issue date. Section

1.291(c)(1)(ii) as proposed to be amended requires that each U.S. patent application publication be identified by patent application publication number, first named inventor, and publication date. Section 1.291(c)(1)(iii) as proposed to be amended requires that each foreign patent or published foreign patent application be identified by the country or patent office that issued the patent or published the application, an appropriate document number, first named inventor, and the publication date indicated on the patent or published application. Section 1.291(c)(1)(iv) as proposed to be amended requires that each non-patent publication be identified by publisher, author, title, pages being submitted, publication date, and place of publication, where such information is available. The qualifier ''where such information is available'' applies to each item of information specified in § 1.291(c)(1)(iv). Thus, if an item of information is not available for a particular non-patent publication (*e.g.,* publisher information), the protestor need not provide that information, and the citation of the non-patent publication would not be improper as a result of not providing that information. Further, § 1.291(c)(1)(iv) as proposed to be amended does not preclude additional information not specified in § 1.291(c)(1)(iv) from being provided (*e.g.,* journal title and volume/issue information for a journal article). Section 1.291(c)(1)(v) as proposed to be amended requires that each item of other information be identified by date, if known. Requiring U.S. and foreign patent and published patent application documents to be identified by the first named inventor should aid in identifying the listed documents in the event the application number, publication number, or other appropriate document number data is inadvertently transposed or otherwise misidentified.

Section 1.291(c)(2) is proposed to be amended to change ''explanation'' to ''description'' to conform to proposed § 1.290(d)(2). This amendment would clarify that there is no difference between the concise description of relevance for a third-party preissuance submission and the concise description of relevance for a protest.

Section 1.291(c)(3) is proposed to be amended to clarify that copies of information submitted must be legible. *See* § 1.98(a)(2) and MPEP § 609.04(a). Section 1.291(c)(3) is also proposed to be amended to provide that copies of U.S. patents and U.S. patent application publications would not need to be submitted, unless required by the Office, as such documents are readily accessible to examiners.

Section 1.292: Section 1.292 is proposed to be removed and reserved. The practice of providing a pre-grant public use proceeding as set forth in § 1.292 is no longer considered necessary, and is inefficient as compared to alternative mechanisms available to third parties for raising prior public use; for example, as provided for by § 1.291 protests, where appropriate, and also by Section 6 of the Leahy-Smith America Invents Act which makes available a post-grant review proceeding.

Sections 1.17 and 41.202: Sections 1.17 and 41.202 would also be amended to change or remove references to §§ 1.99 and 1.292, for consistency with the proposed addition of new § 1.290 and removal of §§ 1.99 and 1.292. Section 1.17(i) would also be amended to correct a misidentification of § 1.53(b)(3) to § 1.53(c)(3) concerning the fee for converting a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

Rulemaking Considerations

A. *Administrative Procedure Act:* This notice proposes changes to the rules of practice concerning the procedure for filing third party preissuance submissions. The changes proposed in this notice do not change the substantive criteria of patentability. Therefore, the changes in this proposed rule are merely procedural and/or interpretive. *See Bachow Communs., Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 242, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law) and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes and the Regulatory Flexibility Act certification discussion below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of this provision of the Leahy-Smith America Invents Act.

B. *Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This notice proposes changes to the rules of practice to implement section 8 of the Leahy-Smith America Invents Act, which provides a mechanism for third parties to submit to the Office, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

The changes proposed in this notice concern requirements for third parties submitting patents, published patent applications, or other printed publications in a patent application. The burden to all entities, including small entities, imposed by these rules is a minor addition to that of the current regulations for third-party submissions under § 1.99. Consistent with the current regulations, the Office will continue to require third parties filing submissions to, for example, file a listing of the documents submitted along with a copy of each document, with minor additional formatting requirements. Additional requirements proposed in this notice are requirements of statute (*e.g.,* the concise explanation) and thus the sole means of accomplishing the purpose of the statute. Because of the expanded scope of submissions under this rulemaking and additional requirements by statute, the Office believes this will take a total of 10 hours at a cost of $3,400.00 per submission. Furthermore, the Office estimates that no more than 730 small entity third parties will make preissuance submissions per year. Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

C. *Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. *Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. *Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. *Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. *Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. *Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. *Executive Order 12630 (Taking of Private Property):* This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. *Unfunded Mandates Reform Act of 1995:* The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. *National Environmental Policy Act:* This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. *Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking proposes changes to the rules of practice that would impact existing information collection requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0651–0062. Accordingly, the Office will submit to the OMB a proposed revision to the information collection requirements under 0651–0062. The proposed revision will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Needs and Uses: This information collection is necessary so that the public may submit patents, published patent applications, and other printed publications to the Office for consideration in a patent application. The Office will use this information, as appropriate, during the patent examination process to assist in evaluating the patent application. The Office will provide a form (PTO/SB/429) to assist the public in making a submission of patents, published patent applications, and other printed publications for consideration in a patent application.

Title of Collection: Third-Party Submissions and Protests.

OMB Control Number: 0651–0062.

Form Numbers: PTO/SB/429.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 1,030 responses filed per year.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public 10 hours.

Estimated Total Annual Respondent Burden Hours: 10,300 hours per year.

Estimated Total Annual Respondent Cost Burden: $3,502,000 per year.

Estimated Total Annual Non-hour Respondent Cost Burden: $185,400 per year in the form of filing fees.

The Office is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical or

other technological collection techniques or other forms of information technology.

Please send comments on or before March 5, 2012 to Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

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

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.99 is removed and reserved.

§ 1.99 [Reserved]

3. Section 1.290 is added as follows:

§ 1.290 Submissions by third parties in applications.

(a) A third party may submit, for consideration and entry in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application if the submission is in compliance with 35 U.S.C. 122(e) and this section. A third-party submission in an application will not be entered or considered by the Office if the submission is not in compliance with 35 U.S.C. 122(e) and this section.

(b) Any third-party submission under this section must be filed before the earlier of:

(1) The date a notice of allowance under § 1.311 is given or mailed in the application; or

(2) The later of:

(i) Six months after the date on which the application is first published by the Office under 35 U.S.C. 122(b) and § 1.211, or

(ii) The date the first rejection under § 1.104 of any claim by the examiner is given or mailed during the examination of the application.

(c) Any third-party submission under this section must be made in writing, and identify on each page of the submission, except for copies required by paragraph (d)(3) of this section, the application to which the submission is directed by application number.

(d) Any third-party submission under this section must include:

(1) A list of the documents being submitted;

(2) A concise description of the asserted relevance of each listed document;

(3) A legible copy of each listed document, or the portion which caused it to be listed, other than U.S. patents and U.S. patent application publications, unless required by the Office;

(4) An English language translation of all relevant portions of any listed non-English language document to be considered by the examiner; and

(5) A statement by the party making the submission that:

(i) The party is not an individual who has a duty to disclose information with respect to the application under § 1.56; and

(ii) The submission complies with the requirements of 35 U.S.C. 122(e) and this section.

(e) The list of documents required by paragraph (d)(1) of this section must list U.S. patents and U.S. patent application publications in a separate section from other documents, include a heading that identifies the listing as a third-party preissuance submission under § 1.290, and identify each:

(1) U.S. patent by patent number, first named inventor, and issue date;

(2) U.S. patent application publication by patent application publication number, first named inventor, and publication date;

(3) Foreign patent or published foreign patent application by the country or patent office that issued the patent or published the application, first named inventor, an appropriate document number, and the publication date indicated on the patent or published application; and

(4) Non-patent publication by publisher, author, title, pages being submitted, publication date, and place of publication, where available. If not apparent from the document, the third party bears the burden of establishing the date of a non-patent publication where asserted to be prior art.

(f) Any third-party submission under this section must be accompanied by the fee set forth in § 1.17(p) for every ten documents or fraction thereof being submitted.

(g) The fee otherwise required by paragraph (f) of this section is not required for a submission listing three or fewer total documents that is accompanied by a statement by the party making the submission that, to the knowledge of the person signing the statement after making reasonable inquiry, the submission is the first and only submission under 35 U.S.C. 122(e) submitted in the application by the party or a party in privity with the party.

(h) In the absence of a request by the Office, an applicant has no duty to, and need not, reply to a submission under this section.

(i) The provisions of § 1.8 do not apply to the time periods set forth in this section.

4. Section 1.291 is amended by revising the introductory text of paragraph (b) and paragraphs (b)(1) and (c) to read as follows:

§ 1.291 Protests by the public against pending applications.

* * * * *

(b) The protest will be entered into the record of the application if, in addition to complying with paragraph (c) of this section, the protest has been served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible; and, except for paragraph (b)(1) of this section, the protest was filed prior to the date the application was published under 35 U.S.C. 122(b) and § 1.211, or a notice of allowance under § 1.311 was given or mailed, whichever occurs first.

(1) If a protest is accompanied by the written consent of the applicant, the protest will be considered if the protest is filed before a notice of allowance under § 1.311 is given or mailed in the application.

* * * * *

(c) In addition to compliance with paragraphs (a) and (b) of this section, a protest must include:

(1) A listing of the patents, publications, or other information relied upon identifying:

(i) Each U.S. patent by patent number, first named inventor, and issue date;

(ii) Each U.S. patent application publication by patent application publication number, first named inventor, and publication date;

(iii) Each foreign patent or published foreign patent application by the country or patent office that issued the patent or published the application, an appropriate document number, first named inventor, and the publication date indicated on the patent or published application;

(iv) Each printed publication is identified by publisher, author, title, pages being submitted, publication date, and place of publication, where available; and

(vi) Each item of other information by date, if known.

(2) A concise description of the relevance of each item listed pursuant to paragraph (c)(1) of this section;

(3) A legible copy of each listed patent, publication, or other item of information in written form, or at least the pertinent portions thereof, other than U.S. patents and U.S. patent application publications, unless required by the Office;

* * * * *

5. Section 1.292 is removed and reserved.

§ 1.292 [Reserved]

Dated: December 30, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–33811 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 11

[Docket No. PTO–C–2011–0089]

RIN 0651–AC76

Implementation of Statute of Limitations Provisions for Office Disciplinary Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Leahy-Smith America Invents Act (AIA) requires that disciplinary proceedings be commenced not later than the earlier of the date that is 10 years after the date on which the misconduct forming the basis of the proceeding occurred, or one year from the date on which the misconduct forming the basis of the proceeding was made known to an officer or employee of the United States Patent and Trademark Office (Office or USPTO), as prescribed in the regulations governing disciplinary proceedings. The Office initiates disciplinary proceedings via three types of disciplinary complaints: complaints predicated on the receipt of a probable cause determination from the Committee on Discipline; complaints seeking reciprocal discipline; and complaints seeking interim suspension based on a serious crime conviction. This notice proposes that the one-year statute of limitations commences, with respect to complaints predicated on the receipt of a probable cause determination from the Committee on Discipline, the date on which the Director, Office of Enrollment and Discipline (OED Director) receives from the practitioner a complete, written response to a request for information and evidence; with respect to complaints based on reciprocal discipline, the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified; and, with respect to complaints for interim suspension based on a serious crime conviction, the date on which the OED Director receives a certified copy of the record, docket entry, or judgment demonstrating that the practitioner has been convicted of a serious crime.

DATES: To be ensured of consideration, written comments must be received on or before March 5, 2012.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *OED_SOL@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop OED–Ethics Rules, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, marked to the attention of William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline. Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

Comments will be made available for public inspection at the Office of Enrollment and Discipline, located on the 8th Floor of the Madison West Building, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, by telephone at (571) 272–4097.

SUPPLEMENTARY INFORMATION: Under 35 U.S.C. 32, the Office may take disciplinary action against any person, agent, or attorney who fails to comply with the regulations established under 35 U.S.C. 2(b)(2)(D). Procedural regulations governing the investigation of possible grounds for discipline and the conduct of disciplinary proceedings are set forth at 37 CFR 11.19 *et seq.*

Section 32 of Title 35, United States Code, as amended by the AIA, requires that a disciplinary proceeding be commenced not later than the earlier of either 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office, as prescribed in the regulations established under 35 U.S.C. 2(b)(2)(D). Thus, the AIA's amendment directs the Office to establish regulations clarifying when misconduct forming the basis for a disciplinary proceeding is made known to the Office.

Prior to the AIA's amendment to 35 U.S.C. 32, disciplinary actions for violations of the USPTO Code of Professional Responsibility were generally understood to be subject to a five-year statute of limitations pursuant to 28 U.S.C. 2462. *See, e.g., Sheinbein* v. *Dudas,* 465 F.3d 493, 496 (Fed. Cir. 2006). With the AIA's new 10-year

limitation period, Congress provided the Office with five additional years to bring an action, thus ensuring that the Office had additional flexibility to initiate ''a [disciplinary] proceeding for the vast bulk of misconduct that is discovered, while also staying within the limits of what attorneys can reasonably be expected to remember,'' *Congressional Record* S1372–1373 (daily ed. March 8, 2011) (statement of Sen. Kyl). Therefore, the new 10-year limitation period indicates congressional intent to extend the time permitted to file a disciplinary action against a practitioner who violates the USPTO Code of Professional Responsibility, rather than to allow such actions to become time-barred. *See id.* at S1372 (''[A] strict five-year statute of limitations that runs from when the misconduct occurs, rather than from when it reasonably could have been discovered, would appear to preclude a section 32 proceeding for a significant number of cases of serious misconduct'').

The one-year limitation period in the AIA reflects that disciplinary actions should be filed in a timely manner from the date when misconduct forming the basis of a disciplinary complaint against a practitioner is made known to ''that section of PTO charged with conducting section 32 proceedings,'' *Congressional Record* S1372 (daily ed. March 8, 2011) (statement of Sen. Kyl). The proposed regulation satisfies the goal of commencing section 32 proceedings without undue delay.

Generally speaking, there are four steps taken by the OED Director prior to the filing of a § 11.32 disciplinary complaint against a practitioner: (1) Preliminary screening of the allegations made against the practitioner, *see* § 11.22(d); (2) requesting of information from the practitioner about his or her alleged conduct, *see* § 11.22(f)(1)(ii); (3) conducting a thorough investigation after providing the practitioner an opportunity to respond to the allegations, *see* § 11.22(a); and (4) submitting the investigated case to the Committee on Discipline for a determination of whether there is probable cause to bring charges against the practitioner, *see* § 11.32.

The first step is the preliminary screening of allegations to evaluate whether they merit providing the practitioner the opportunity to address them. Allegations are often incomplete and do not provide the OED Director with a full picture of what may have transpired. In other words, mere allegations do not necessarily provide the OED Director with a reasonable basis for automatically seeking information from the practitioner regarding a possible ethical violation; therefore, the OED Director always conducts an initial review of the allegations. Moreover, the OED Director recognizes that issuing a request for information to the practitioner—the second step—typically triggers anxiety for the practitioner, may interfere with the practitioner's practice, and may cause the practitioner to incur legal expenses in responding to investigative inquiries by OED. For this reason also, OED does not contact the practitioner automatically upon receipt of information alleging a practitioner committed an ethical violation. In short, the OED Director seeks the practitioner's side of the story, if at all, only after the OED Director preliminarily screens the information and determines that possible grounds for discipline exist. *See* 37 CFR 11.22(d).

During the preliminary screening process, an OED staff attorney reviews the allegations to determine whether they implicate any of the Disciplinary Rules of the USPTO Code of Professional Responsibility. To this end, the attorney may seek out additional evidence (review Office records, request additional information from the person making the allegations or from third persons, *etc.*) to ensure that the matter is disciplinary in nature and the allegations are supported by objective evidence.

The OED's preliminary screening may obviate the need to seek information from the practitioner because the screening often reveals that the allegations do not present a basis for filing a § 11.32 disciplinary action against the practitioner. Under such circumstances, the OED Director closes the case without contacting the practitioner. Hence, the preliminary screening helps ensure that a practitioner is not subjected to a premature request for information or its attendant stress, turmoil, and cost. The screening also ensures that the Office does not expend its limited resources seeking information from a practitioner unnecessarily.

After the preliminary screening, if the OED Director determines that the allegations establish possible grounds for discipline, the OED Director seeks the practitioner's side of the story—the second step prior to filing a § 11.32 action. Specifically, the OED Director requests information or evidence from the practitioner pursuant to § 11.22(f)(1)(ii). The practitioner will then have an opportunity to respond to the allegations levied against him or her. Typically, the OED Director does not and cannot have sufficient information to complete a thorough investigation—the third step—before the practitioner has had the opportunity to present his or her side of the story.

Based on current caseload and staffing levels, the OED Director has set a goal to complete the preliminary screening and issue a § 11.22(f)(1)(ii) request, when warranted, to the practitioner under investigation within 60 calendar days of the initial receipt by the OED Director of information suggesting possible misconduct. OED will allow the practitioner 30 calendar days to provide a complete, written response and, as discussed below, may grant a reasonable request for an extension of time to respond.

A complete response to an initial § 11.22(f) request frequently raises factual issues that require further investigation before the OED Director can determine whether actual grounds for discipline exist. Hence, after the OED Director receives the practitioner's response to the § 11.22(f)(1)(ii) request, the OED Director moves to the third step: conducting a thorough investigation of the allegations to uncover all relevant incriminating and exculpating evidence. The third step is time-consuming because it involves the OED Director undertaking a thorough fact-finding (*e.g.,* reviewing issues raised for the first time by the practitioner, obtaining information from any person who may be reasonably expected to provide information or evidence in connection with the investigation pursuant to § 11.22(f)(iii) and from non-grieving clients pursuant to § 11.22(f)(2)) and performing legal analyses of issues. It is in the interests of the public as well as the practitioner under investigation that OED conduct a thorough investigation prior to determining whether the matter should be submitted to the Committee on Discipline pursuant to § 11.32. Hence, such additional follow-up investigative and legal work can take several months to complete.

After completing an investigation of the allegations against a practitioner, the OED Director has the authority to close the investigation without pursuing disciplinary action, issue a warning to the practitioner, enter into a proposed settlement agreement with the practitioner, or convene the Committee on Discipline to determine whether there is probable cause to file a § 11.32 action against the practitioner. *See* 37 CFR 11.22(h). Based on current caseload and staffing levels, the OED Director has set a goal to submit a matter to the Committee on Discipline for a probable cause determination—the fourth step—within 10 months of the initial receipt by the OED Director of the allegations

that a practitioner engaged in misconduct.

Under the proposed regulation, the one-year statute of limitations begins to run for § 11.32 actions when the OED Director receives the practitioner's complete, written response to a § 11.22(f)(1)(ii) request. The proposed regulation reflects that a complete response to a § 11.22(f)(1)(ii) request usually is a significant step in making a practitioner's misconduct known to the OED Director in an informed and meaningful way. This step in the process gives the practitioner an opportunity to respond to the allegations levied against him or her. Basic notions of fairness to the practitioner, and integrity of the process, are primary purposes for providing an opportunity to respond.

Additionally, the proposed regulation provides the OED Director with needed flexibility in obtaining information from the practitioner. On a case-by-case basis, the OED Director has the authority to grant extensions of time to respond to a § 11.22(f)(1)(ii) request for information. Such extensions may be important to the practitioner because they often give the practitioner the time needed to secure legal counsel, conduct his or her own inquiry, and prepare a complete, written response to the OED Director's request. The OED Director grants such requests where it is appropriate to do so, taking into consideration whether an extension would jeopardize the timely completion of the investigation in light of any approaching deadline under the statute of limitations. Historically, the OED Director has granted 30-, 60-, or even 90-day extensions of time to practitioners. Under the proposed regulation, the OED Director is able to continue to afford a practitioner a reasonable period of time to address allegations of ethical violations because the limitation period would not commence until after the practitioner provides a complete, written response.

The Office carefully considered, but decided against proposing, a regulation that commences the one-year limitation period for § 11.32 actions on the date on which the OED Director initially receives allegations about a practitioner. The Office did not choose such a regulation for three reasons. First, the Office usually receives information about a practitioner from a client who alleges that the practitioner acted improperly. While mere allegations of ethical violations may alert the Office that a client is subjectively dissatisfied with a practitioner, they often do not provide sufficient objective evidence that misconduct has occurred. The accuser's naked assertions about a practitioner rarely put the Office on notice of misconduct forming the basis of a disciplinary proceeding because such statements often do not provide a complete, objective picture of what transpired between the practitioner and the client. It is also unfair to the practitioner that the basis of a disciplinary proceeding be predicated only on the allegations levied against him or her without providing the practitioner an opportunity to respond to the allegations. As discussed above, this basic notion of fairness to the practitioner against whom allegations of misconduct have been made is one main purpose of the proposed regulation.

Second, a regulation that proposes commencing the one-year limitation period on the date the OED Director initially receives allegations about a practitioner's alleged misconduct would unnecessarily restrict the OED Director's ability to grant reasonable extensions of time to respond to the OED Director's initial request for information. As discussed above, such extensions are important to the practitioner. But the OED Director might be compelled to deny an extension of time out of necessity if the Office only had one year from the date of initial receipt of allegations about a practitioner to obtain and consider the practitioner's side of the story; conduct and conclude an investigation; prepare and submit the matter to the Committee on Discipline; and prepare and file a disciplinary complaint based on the Committee's probable cause determination. Likewise, it would not be in the best interest of the Office not to grant an extension because the OED Director strives to present all available, relevant evidence to the Committee on Discipline in every § 11.32 disciplinary action. By comparison, the proposed regulation follows the long-standing practice of affording a practitioner a reasonable opportunity to respond to the allegations levied against him or her.

Third, the Office is concerned that starting the one-year limitation period from the date the OED Director initially receives an allegation of misconduct might encourage dilatory responses and other delay tactics by practitioners, which would not be in the public interest. For example, a practitioner could simply choose to hinder the investigation by providing incomplete responses to § 11.22(f)(1)(ii) requests with the purpose of having the one-year limitation period run without the OED Director having received the practitioner's side of the story. This would result in a less than thorough investigation being submitted to the Committee on Discipline to determine whether probable cause exists that the practitioner engaged in misconduct.

The Office also carefully considered, but decided against proposing, an alternative regulation that starts the one-year limitation period for § 11.32 actions on the date on which the OED Director decides, after conducting a preliminary screening of the initial information about a practitioner, to obtain the practitioner's side of the story. Such a regulation would not provide the OED Director the same degree of flexibility in allowing extensions of time for the practitioner to respond to § 11.22(f)(1)(ii) requests. Moreover, it would encroach on the sense of fair play that permeates the proposed regulation.

The Office also considered, but chose not to propose, two other regulations starting the one-year limitation period for § 11.32 actions. The first would start the limitation period on the date that the OED Director submits a fully investigated case to a Committee on Discipline panel pursuant to 37 CFR 11.32. The second would start the one-year limitation period on the date the Committee on Discipline forwards its probable cause determination to the OED Director pursuant to 37 CFR 11.23(b)(2).

In addition to actions filed under 37 CFR 11.32, the OED Director commences reciprocal disciplinary complaints under 37 CFR 11.24 and complaints for interim suspension predicated upon conviction of a serious crime under 37 CFR 11.25. Complaints under § 11.24 and § 11.25 are not submitted to the Committee on Discipline for a probable cause determination but are filed directly with the USPTO Director. *See* 37 CFR 11.24 and 11.25. Complaints under § 11.24 and § 11.25, however, must include a certified copy of the record showing that a practitioner was disciplined by another authority or convicted of a serious crime. *Id.* Obtaining certified copies of the requisite records is how the OED Director learns in a meaningful way of misconduct which can form the basis of a disciplinary proceeding brought under § 11.24 and § 11.25.

It is OED's practice to request a certified copy of the requisite records within 60 calendar days of receiving information suggesting that a practitioner has been disciplined by another authority or has been convicted of a serious crime. It also is OED's practice to contact the practitioner within the same 60-day period for the purpose of providing the practitioner an opportunity to explain whether he or she is the same person who was disciplined by another licensing

authority or convicted of a serious crime.

Here, the proposed regulation starts the one-year limitation period as of the date the OED Director receives a certified copy of the requisite records. Thus, for reciprocal discipline complaints filed pursuant to § 11.24(a), this notice proposes that the one-year limitation period commences the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified. For interim suspension complaints filed pursuant to § 11.25(a), the limitation period begins the date on which the OED Director receives a certified copy of the record, docket entry, or judgment demonstrating that the practitioner has been convicted of a serious crime. Based on current caseload and staffing levels, the OED Director has set a goal to file § 11.24 and § 11.25 complaints with the USPTO Director within 60 calendar days of the date when OED obtains certified copies of the requisite records.

Discussion of Specific Rule

Section 11.22 would be revised to add subsection (f)(3), which would specify that the OED Director shall request information and evidence from the practitioner prior to convening a panel of the Committee on Discipline under § 11.32. As discussed above, the second step prior to filing a complaint in a § 11.32 action is to request information or evidence from the practitioner pursuant to § 11.22(f)(1)(ii). This allows the practitioner to provide the OED Director with his or her views as to the allegations during the course of the investigation.

Section 11.34 would be revised to add subsection (d), which would specify the time in which the OED Director may file a disciplinary complaint against an individual subject to the disciplinary authority of the Office. Specifically, in accordance with the AIA, a complaint shall be filed not later than the earlier of either ten years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office. The date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office is: (a) For complaints filed pursuant to section 11.24, the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended or disciplinarily disqualified; (b) for complaints filed pursuant to section 11.25, the date on which the OED Director receives a certified copy of the record, docket entry or judgment demonstrating that the practitioner has been convicted of a serious crime; and (c) for complaints filed pursuant to § 11.32, the date on which the OED Director receives from the practitioner, who is the subject of an investigation commenced under section § 11.22(a), a complete, written response to a request for information and evidence issued pursuant to § 11.22(f)(1)(ii).

Rulemaking Considerations

Administrative Procedure Act: This notice proposes to prescribe regulations to implement the statute of limitations provisions for commencing a disciplinary proceeding pursuant to the AIA. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.SC. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these proposed changes and the Regulatory Flexibility Act certification discussion below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the AIA.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603. Nevertheless, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The primary purpose of the proposed rule is to establish regulations pursuant to recent revisions to 35 U.S.C. 32 that govern time limits for the Office to commence a disciplinary action. This proposed rule does not increase or change the burdens of practitioners involved in disciplinary proceedings or the investigation process. There are approximately 42,000 individuals registered to practice before the Office in patent matters and many unregistered attorneys who practice before the Office in trademark matters. In a typical year, the Office considers approximately 150 to 200 matters concerning possible misconduct by individuals who practice before the Office in patent and/or trademark matters, and fewer than 100 matters per year lead to a formal disciplinary proceeding or settlement. Thus, only a relatively small number of individuals are involved in the disciplinary process. Additionally, based on the Office's experience in investigations that precede the disciplinary process, the Office does not anticipate this proposed rule will result in a significant increase, if any, in the number of individuals who are impacted by a disciplinary proceeding or investigation. Accordingly, the changes in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism): This notice of proposed rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866 (Regulatory Planning and Review): This notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify

the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

Paperwork Reduction Act: This rulemaking does not create any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. However, this action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the United States Patent and Trademark Office proposes to amend 37 CFR Part 11 as follows:

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 11 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

2. Section 11.22 is amended to add paragraph (f)(3) as follows:

* * * * *

(f) Request for information and evidence by OED Director.

* * * * *

(3) The OED Director shall request information and evidence from the practitioner prior to convening a panel of the Committee on Discipline under § 11.32.

* * * * *

3. Section 11.34 is amended to add paragraph (d) as follows:

§ 11.34 Complaint.

* * * * *

(d) *Time for filing a complaint.* A complaint shall be filed not later than the earlier of either ten years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office. The date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office is:

(1) with respect to complaints under § 11.24, the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified;

(2) with respect to complaints under § 11.25, the date on which the OED Director receives a certified copy of the record, docket entry, or judgment demonstrating that the practitioner has been convicted of a serious crime; and

(3) with respect to complaints under § 11.32, the date on which the OED Director receives from the practitioner, who is the subject of an investigation commenced under section § 11.22(a), a complete, written response to a request for information and evidence issued pursuant to § 11.22(f)(1)(ii).

Dated: December 30, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–33814 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0542; FRL–9502–1]

RIN 2060–AR07

Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is issuing a proposed rule that identifies additional fuel pathways that EPA has determined meet the biomass-based diesel, advanced biofuel or cellulosic biofuel lifecycle greenhouse gas (GHG) reduction requirements specified in Clean Air Act section 211(o), the Renewable Fuel Standard Program, as amended by the Energy Independence and Security Act of 2007 (EISA). This proposed rule describes EPA's evaluation of biofuels produced from camelina oil, energy cane, giant reed, and napiergrass; it also includes an evaluation of renewable gasoline and renewable gasoline blendstocks, as well as biodiesel from esterification, and clarifies our definition of renewable diesel.

This proposed rule adds these pathways to Table in regulations as pathways which have been determined to meet one or more of the GHG reduction thresholds specified in CAA 211(o), and assigns each pathway a corresponding D-Code. It allows producers or importers of fuel produced pursuant to these pathways to generate Renewable Identification Numbers (RINs), providing that the fuel meets the other requirements specified in the RFS regulations to qualify it as renewable fuel.

DATES: Written comments must be received by February 6, 2012. A request for a public hearing must be received by January 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0542, by mail to Air and Radiation Docket, Docket No. EPA–HQ–OAR–2011–0542, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Vincent Camobreco, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–9043; fax number: (202) 564–1686; email address: *camobreco.vincent@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing a proposed rule?

This document proposes to take action to identify additional qualifying renewable fuel pathways under the Renewable Fuel Standard Program. We have published a direct final rule that describes our rationale for identifying these additional fuel pathways, including GHG lifecycle analyses, in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives relevant adverse comment or a hearing request on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which portion of the rule is being withdrawn. Any distinct amendment, paragraph, or section of today's rule not withdrawn will become effective on the date set out in the direct final rule. We will address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

II. Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

III. What should I consider as I prepare my comments for EPA?

A. *Submitting information claimed as CBI.* Do not submit information you claim as CBI to EPA through *www.regulations.gov* or email. 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.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard (RFS) Program

EPA is issuing a proposed rule to identify in the RFS regulations additional renewable fuel production pathways that we have determined meet the greenhouse gas (GHG) reduction requirements of the RFS program. This proposed rule describes EPA's evaluation of:

Camelina oil (new feedstock)

- Biodiesel and renewable diesel (including jet fuel and heating oil)—*qualifying as biomass-based diesel and advanced biofuel.*
- Naphtha and liquefied petroleum gas (LPG)—*qualifying as advanced biofuel.*

Energy cane, giant reed, and napiergrass cellulosic biomass (new feedstocks)

- Ethanol, renewable diesel (including renewable jet fuel and heating oil), and naphtha—*qualifying as cellulosic biofuel.*

Renewable gasoline and renewable gasoline blendstock (new fuel types)

- Produced from crop residue, slash, pre-commercial thinnings, tree residue, annual cover crops, and cellulosic components of separated yard waste, separated food waste, and separated municipal solid waste (MSW).
- Using the following processes—all utilizing natural gas, biogas, and/or biomass as the only process energy sources—*qualifying as cellulosic biofuel:*
  - Thermochemical pyrolysis.
  - Thermochemical gasification.
  - Biochemical direct fermentation.
  - Biochemical fermentation with catalytic upgrading.
  - Any other process that uses biogas and/or biomass as the only process energy sources.

Esterification (new production process)

- Process used to produce biodiesel from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, non-food grade corn oil, Canola/rapeseed oil, and camelina oil—*qualifying as biomass-based diesel and advanced biofuel.*

This proposed rule adds these pathways to Table 1 to § 80.1426 and assigns each pathway one or more D-Codes.

Determining whether a fuel pathway satisfies the CAA's lifecycle GHG reduction thresholds for renewable fuels requires a comprehensive evaluation of the lifecycle GHG emissions of the renewable fuel as compared to the lifecycle GHG emissions of the baseline gasoline or diesel fuel that it replaces. As mandated by CAA section 211(o), the GHG emissions assessments must evaluate the aggregate quantity of GHG emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes) related to the full fuel lifecycle, including all stages of fuel and feedstock production, distribution, and use by the ultimate consumer.

In examining the full lifecycle GHG impacts of renewable fuels for the RFS program, EPA considers the following:

- Feedstock production—based on agricultural sector models that include direct and indirect impacts of feedstock production.
- Fuel production—including process energy requirements, impacts of any raw materials used in the process, and benefits from co-products produced.
- Fuel and feedstock distribution—including impacts of transporting feedstock from production to use, and transport of the final fuel to the consumer.
- Use of the fuel—including combustion emissions from use of the fuel in a vehicle.

Many of the pathways evaluated in this proposal rely on a comparison to the lifecycle GHG analysis work that was done as part of the Renewable Fuel Standard Program (RFS2) Final Rule, published March 26, 2010.

More information on the different pathways evaluated is included below. For additional information on our GHG lifecycle analyses for this proposal, as well as the text of the proposed regulatory changes, see the direct final rule which is located in the Rules section of this **Federal Register**.

Camelina: Current information suggests that camelina has limited niche markets and will be produced on land that would otherwise remain fallow. Therefore, increased production of camelina-based renewable fuel is not expected to result in significant land use change emissions. For the purposes of this proposed analysis, EPA is projecting there will be no land use emissions associated with camelina production for use as a renewable fuel feedstock.

Taking into account the assumption of no land use change emissions when camelina is used to produce renewable fuel, and considering that other sources of GHG emissions related to camelina biodiesel or renewable diesel production have comparable GHG emissions to biodiesel from soybean oil, we are proposing that camelina-based biodiesel and renewable diesel should be treated in the same manner as soy-based biodiesel and renewable diesel in qualifying as biomass-based diesel and advanced biofuel for purposes of RIN generation since the GHG emission performance of the camelina-based fuels will be at least as good and in some respects better than that modeled for fuels made from soybean oil. EPA found as part of the Renewable Fuel Standard final rulemaking that soybean biodiesel resulted in a 57% reduction in GHG emissions compared to the baseline petroleum diesel fuel. Furthermore, approximately 80% of the lifecycle impacts from soybean biodiesel were from land use change emissions which are assumed to be not significant for the camelina pathway considered. Thus, EPA is proposing to include camelina oil as a potential feedstock under the same biodiesel and renewable diesel pathways for which soybean oil currently qualifies. We are also proposing to include a pathway for jet fuel, naphtha, and LPG produced from camelina oil through hydrotreating. This

is based on the fact that our analysis shows that even when all of the co-products are used to generate RINs the lifecycle GHG emissions for RIN-generating co-products including diesel replacement fuel, jet fuel, naphtha and LPG produced from camelina oil will all meet the 50% GHG emissions reduction threshold.

We are also proposing that two existing pathways for RIN generation in the RFS regulations that list ''renewable diesel'' as a fuel product produced through a hydrotreating process include jet fuel. This applies to two pathways in Table 1 to § 80.1426 of the RFS regulations which both list renewable diesel made from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, or non-food grade corn oil using hydrotreating as a process. We are proposing that if parties produce jet fuel from the hydrotreating process and co-process renewable biomass and petroleum they can generate advanced biofuel RINs (D code 5) for the jet fuel produced. We are also proposing that if they do not co-process renewable biomass and petroleum they can generate biomass-based diesel RINs (D code 4) for the jet fuel produced.

§ 80.1401 of the RFS regulations currently defines non-ester renewable diesel as a fuel that is not a mono-alkyl ester and which can be used in an engine designed to operate on conventional diesel fuel or be heating oil or jet fuel. The reference to jet fuel in this definition was added by direct final rule dated May 10, 2010. Table 1 to § 80.1426 identifies approved fuel pathways by fuel type, feedstock source and fuel production processes. The table, which was largely adopted as part of the March 26, 2010 RFS2 final rule, identifies jet fuel and renewable diesel as separate fuel types. Accordingly, in light of the revised definition of renewable diesel enacted after the RFS2 rule, there is ambiguity regarding the extent to which references in Table 1 to ''renewable diesel'' include jet fuel.

The original lifecycle analysis for the renewable diesel from hydrotreating pathways listed in Table 1 to § 80.1426 was not based on producing jet fuel but rather other transportation diesel fuel products, namely a diesel fuel replacement. As discussed in the direct final rule, the hydrotreating process can produce a mix of products including jet fuel, diesel, naphtha, LPG and propane. Also, as discussed, there are differences in the process configured for maximum jet fuel production vs. the process maximized for diesel fuel production and the lifecycle results vary depending on what approach is used to consider co-products (*i.e.,* the allocation or displacement approach).

In cases where there are no pathways for generating RINs for the co-products from the hydrotreating process it would be appropriate to use the displacement method for capturing the credits of co-products produced. This is the case for most of the original feedstocks included in Table 1 to § 80.1426. If the displacement approach is used when jet fuel is the primary product produced it results in lower emissions then the production maximized for diesel fuel production. Therefore, since the hydrotreating process maximized for diesel fuel meets the 50% lifecycle GHG threshold for the feedstocks in question, the process maximized for jet fuel would also qualify.

Thus, we are proposing that the references to ''renewable diesel'' in Table 1 include jet fuel, consistent with our regulatory definition of ''non-ester renewable diesel,'' since doing so clarifies the existing regulations while ensuring that Table 1 to § 80.1426 appropriately identifies fuel pathways that meet the GHG reduction thresholds associated with each pathway.

We note that although the definition of renewable diesel includes jet fuel and heating oil, we are also proposing to list in Table 1 of section 80.1426 of the RFS2 regulations jet fuel and heating oil as specific co-products in addition to listing renewable diesel to assure clarity. This clarification also pertains to all the feedstocks already included in Table 1 for renewable diesel.

Energy grasses: Based on our comparison of switchgrass and the three feedstocks considered here, EPA is proposing that cellulosic biofuel produced from the cellulose, hemicellulose and lignin portions of energy cane, giant reed, and napiergrass has similar or better lifecycle GHG impacts than biofuel produced from the cellulosic biomass from switchgrass. Our proposed analysis suggests that the three feedstocks considered have GHG impacts associated with growing and harvesting the feedstock that are similar to switchgrass. Emissions from growing and harvesting energy cane are approximately 4 kg CO2eq/mmBtu higher than switchgrass, emissions from growing and harvesting giant reed are approximately 2 kg CO2eq/mmBtu lower than switchgrass, and emissions from growing and harvesting napiergrass are approximately 6 kg CO2eq/mmBtu higher than switchgrass. These are small changes in the overall lifecycle, representing at most a 6% change in the energy grass lifecycle impacts in comparison to the petroleum fuel baseline. Furthermore, the three feedstocks considered are expected to have similar or lower GHG emissions than switchgrass associated with other components of the biofuel lifecycle.

As a hypothetical worst case, if the calculated increases in growing and harvesting the new feedstocks are incorporated into the lifecycle GHG emissions calculated for switchgrass, and other lifecycle components are projected as having similar GHG impacts to switchgrass (including land use change associated with switchgrass production), the overall lifecycle GHG reductions for biofuel produced from energy cane, giant reed, and napiergrass still meet the 60% reduction threshold for cellulosic biofuel, the lowest being a 64% reduction (for napiergrass F–T diesel) compared to the petroleum baseline. We believe these are conservative estimates, as use of energy cane, giant reed, or napiergrass as a feedstock is expected to have smaller land-use GHG impacts than switchgrass, due to their higher yields.

Although this analysis assumes energy cane, giant reed, and napiergrass biofuels produced for sale and use in the United States will most likely come from domestically produced feedstock, we also intend for the proposed pathways to cover energy cane, giant reed, and napiergrass from other countries. We do not expect incidental amounts of biofuels from feedstocks produced in other nations to impact our average GHG emissions. Moreover, other countries most likely to be exporting energy cane, giant reed, or napiergrass or biofuels produced from these feedstocks are likely to be major producers which typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biofuels with energy cane, giant reed, or napiergrass grown in other countries should be similar to the GHG emissions we estimated for U.S. energy cane, giant reed, or napiergrass, though they could be slightly (and insignificantly) higher or lower. For example, the renewable biomass provisions under the Energy Independence and Security Act would prohibit direct conversion of previously unfarmed land in other countries into cropland for energy grass-based renewable fuel production. Furthermore, any energy grass production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for switchgrass production. Even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other

countries will not impact our threshold analysis.

Based on our assessment of switchgrass in the RFS2 final rule and this comparison of GHG emissions from switchgrass and energy cane, giant reed, and napiergrass, we do not expect variations to be large enough to bring the overall GHG impact of fuel made from energy cane, giant reed or napier grass to come close to the 60% threshold for cellulosic biofuel. Therefore, EPA is proposing to include cellulosic biofuel produced from the cellulose, hemicelluloses and lignin portions of energy cane, giant reed, and napiergrass under the same pathways for which cellulosic biomass from switchgrass qualifies under the RFS2 final rule.

Renewable gasoline and renewable gasoline blendstock: Three renewable gasoline and renewable gasoline blendstock pathways were compared to baseline petroleum gasoline, using the same value for baseline gasoline as in the RFS2 final rule analysis. The results of the proposed analysis indicate that the renewable gasoline and renewable gasoline blendstock pathways result in a GHG emissions reduction of 65–129% or better compared to the gasoline fuel it would replace using corn stover as a feedstock. Since the renewable gasoline and renewable gasoline blendstock pathways which use corn stover as a feedstock all exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel, and since these pathways capture the likely current technologies and since future technology improvements are likely to increase efficiency and lower GHG emissions, we are proposing that all processes producing renewable gasoline or renewable gasoline blendstock from corn stover can qualify if they fall in the following process characterizations:

- Catalytic pyrolysis and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Gasification and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Direct fermentation utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Fermentation and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Any process utilizing biogas and/or biomass as the only process energy sources.

As was the case for extending corn stover results to other feedstocks in the RFS2 final rule, we are proposing to extend these results to feedstocks with similar or lower GHG emissions profiles, including the following feedstocks:

- Cellulosic biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual cover crops;
- Cellulosic components of separated yard waste;
- Cellulosic components of separated food waste; and
- Cellulosic components of separated MSW.

For more information on the reasoning for extension to these other feedstocks refer to the feedstock production and distribution section or the RFS2 rulemaking (75 FR 14793–14795).

Based on these results, today's proposed rule includes pathways for the generation of cellulosic biofuel RINs for renewable gasoline or renewable gasoline blendstock produced by catalytic pyrolysis and upgrading, gasification and upgrading, direct fermentation, fermentation and upgrading, all utilizing natural gas, biogas, and/or biomass as the only on-site process energy sources or any process utilizing biogas and/or biomass as the only on-site energy sources, and using corn stover as a feedstock or the feedstocks noted above. In order to qualify for RIN generation, the fuel must meet the other definitional criteria for renewable fuel (*e.g.,* produced from renewable biomass, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel) specified in the Clean Air Act and the RFS regulations.

Direct Esterification: Using the same methodology as was used for the yellow grease modeling under RFS2, but using high energy and materials use assumptions and omitting the glycerin co-product credit, we estimate the GHG emissions reduction for the esterification of specified feedstocks with any level of FFA process is −71%. Since the GHG threshold is at −50% for biomass-based diesel and advanced biofuel, we believe that there is a large enough margin in the results to reasonably conclude that biodiesel using esterification of specified feedstocks with any level of FFA content meets the biomass-based diesel and advanced biofuel 50% lifecycle GHG reduction threshold. Therefore, we are proposing to include the process ''esterification'' as an approved biodiesel production process in Table 1 to § 40 CFR 80.1426. In addition, consistent with the modeling conducted for RFS2, we are proposing to interpret the RFS regulations as they existed prior to today's rule as including a direct esterification process as part of the biodiesel pathways for which only ''trans-esterification'' was specifically referenced in Table 1 to § 40 CFR 80.1426.

V. Additional Changes to Listing of Available Pathways in Table 1 of 80.1426

We are also proposing two changes to Table 1 to 80.1426 that were proposed on July 1, 2011 (76 FR 38844). The first change adds ID letters to pathways to facilitate references to specific pathways. The second change adds ''rapeseed'' to the existing pathway for renewable fuel made from canola oil.

On September 28, 2010, EPA published a ''Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program from Canola Oil'' (FR Vol. 75, No. 187, pg 59622–59634). In the July 1, 2011 NPRM (76 FR 38844) we proposed to clarify two aspects of the supplemental determination. First we proposed to amend the regulatory language in Table 1 to § 80.1426 to clarify that the currently-approved pathway for canola also applies more generally to rapeseed. While ''canola'' was specifically described as the feedstock evaluated in the supplemental determination, we had not intended the supplemental determination to cover just those varieties or sources of rapeseed that are identified as canola, but to all rapeseed. As described in the July 1, 2011 NPRM, we currently interpret the reference to ''canola'' in Table 1 to § 80.1426 to include any rapeseed. To eliminate ambiguity caused by the current language, however, we proposed to replace the term ''canola'' in that table with the term ''canola/rapeseed''. Canola is a type of rapeseed. While the term ''canola'' is often used in the American continent and in Australia, the term ''rapeseed'' is often used in Europe and other countries to describe the same crop. We received no adverse comments on our July 1, 2011 proposal but are re-proposing it here in case we receive adverse comment in response to the direct final rule also published today.

Second, we wish to clarify that although the GHG emissions of producing fuels from canola feedstock grown in the U.S. and Canada was specifically modeled as the most likely source of canola (or rapeseed) oil used for biodiesel produced for sale and use in the U.S., we also intended that the approved pathway cover canola/rapeseed oil from other countries, and we propose to interpret our regulations in that manner. We expect the vast majority of biodiesel used in the U.S.

and produced from canola/rapeseed oil will come from U.S. and Canadian crops. Incidental amounts from crops produced in other nations will not impact our average GHG emissions. Therefore, EPA proposes to interpret the approved canola pathway as covering canola/rapeseed regardless of country origin.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under 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. The corrections, clarifications, and modifications to the final RFS2 regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final RFS2 regulations.

OMB has approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0637 and 2060–0640. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this action on small entities, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. The relatively minor corrections and modifications this proposed rule makes to the final RFS2 regulations do not impact small entities. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule 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. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed 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. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations.

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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. Nonetheless, EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 18355 (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 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 (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed 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. These amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

VII. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: November 30, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–31577 Filed 1–4–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

Notice of Tribal Consultation Meetings Regarding How the Current SACWIS Regulations Affect Tribes Administering a Title IV–E Program

AGENCY: Children's Bureau, ACYF, ACF, HHS.

ACTION: Notice of Tribal Consultation.

SUMMARY: Title IV–E rules provide Federal Financial Participation (FFP) through a beneficial cost allocation methodology if a State or Tribe implements a comprehensive Statewide Automated Child Welfare Information System (SACWIS) to track and manage child protection, foster care and adoption assistance activities. With the continuing implementation of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351) we wish to analyze the impact of the State-centric SACWIS rules on Tribes and Tribal child welfare agencies, to determine if Tribes have sufficient flexibility and latitude to build information systems that will meet their business needs.

The Children's Bureau's (CB) Division of State Systems (DSS) has been assigned responsibility to undertake consultation with Tribes in this area. To offer Tribes the opportunity for informed comment on the implications that the State-centric rules have on their ability to build and operate information systems that will support their title IV–E programs, we will provide an education session on the SACWIS regulations. This will be followed by a consultation to listen to the concerns and ideas from Tribal leaders and their representatives about the existing SACWIS rules and how CB can support title IV–E Tribal agencies in building information systems that will meet their business needs. We propose two such combined meetings via teleconferences to reach a broad audience of interested parties. The teleconference on February 15, 2012, is intended for consultation with Tribal leaders; the teleconference on February 16, 2012, is intended to engage in consultation with their representatives.

DATES: The meeting dates and times for teleconferences are:

- February 15, from 1–3 p.m. EST.
- February 16, from 3–5 p.m. EST.

Access information for these teleconferences is in the Supplementary Information section.

Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 6, 2012.

ADDRESSES: You may submit written comments about this topic by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: DSSComments@acf.hhs.gov.* Please include ''Comments on Tribal Consultation'' in the subject line of the message.
- *Mail or Courier Delivery:* Terry Watt, Director, Division of State Systems, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue SW., 8th Floor, Washington, DC 20024.

If you choose to use an express, overnight, or other special delivery method, please verify first that they are able to deliver to the above address during the normal workweek. We encourage you to submit comments electronically so that they are received in a timely manner. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Written comments and comments provided during consultation will receive equal consideration by CB.

FOR FURTHER INFORMATION CONTACT: If you have questions about this process, or want further information about current Federal regulations governing child welfare automation, please contact Mr. Peter Howe, John F. Kennedy Federal Building, Room 2000 West, 15 New Sudbury Street, Boston, MA 02203; voice: (617) 565–1515; by email at: *peter.howe@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Teleconferences: The teleconference on February 15, 2012 at 1 p.m. EST is reserved for Tribal leaders; the teleconference on February 16, 2012 at 3 p.m. EST is intended for their representatives. Access information for these teleconferences is as follows:

February 15 call in: (888) 989–8183; Password: 368–9268.
February 16 call in: (888) 673–9785; Password: 621–8061.

The teleconferences will be recorded, and a summary of the content will be published within 45 days of the February 16, 2012 call.

SACWIS Background: Sections 474(a)(3)(C) and (D) of the Social Security Act (the Act) provide States,

and now Tribes, with the opportunity to access additional funding through title IV–E to plan, design, develop, implement, and operate a SACWIS. The regulations at 45 CFR 1355.50–1355.57 were established in response to implementing legislation and were issued on December 22, 1993, and did not consider the program needs of Tribal title IV–E agencies.

SACWIS systems are described in detail in program instructions issued by CB. A general program description, and links to statutes, regulations, and other program guidance related to SACWIS can be found at: *http://www.acf.hhs.gov/programs/cb/systems/sacwis/federal.htm.* Two Action Transmittals that can be found there are of particular interest in understanding SACWIS rules. They are:

• ACF–OISM–001, issued on February 24, 1995, provided the CB's initial guidance and policy on SACWIS planning, designing, development and implementation.

• ACF–OSS–05, issued on August 21, 1998, provides additional guidance on the implementation and operation of a SACWIS, and supersedes some sections of AT–ACF–OISM–001.

Program Instructions (PI) whose topics may be directly relevant to Tribes include:

• ACYF–CB–PI–09–11, issued on September 17, 2009, describes the Federal Advance Planning Document (APD) regulations that Tribes have to comply with to claim title IV–B and/or title IV–E FFP for child welfare information technology projects, equipment and services.

• ACYF–CB–PI–11–07, issued on July 5, 2011, describes for States and Tribes the changes to the regulations at 45 CFR Part 95 related to the APD process used to obtain approval of FFP for acquiring automated data processing equipment and services.

• ACYF–CB–PI–11–08, issued on July 7, 2011, describes changes regarding the APD waiver process within the Federal regulations at 45 CFR part 95, and offers guidance when requesting a waiver to use a commercial-off-the-shelf (COTS) software product designed for the title IV–E or title IV–B programs.

Review of these Action Transmittals and PI may help participants pinpoint questions for Federal participants in the education portion of the teleconference.

Since the SACWIS regulations were issued 18 years ago, Federal child welfare laws have reflected changes associated with the enactment of several major child welfare legislative initiatives. The Fostering Connections to Success and Increasing Adoptions Act of 2008 Public Law 110–351 enabled Tribal self-governance in child welfare, permitting Tribes to access title IV–E reimbursement directly from the Federal government, rather than working through a State's IV–E program. As Tribes were awarded title IV–E development grants, staff from their Child Welfare programs expressed interest in acquiring automated technology. It became evident to CB that the SACWIS model might not meet the needs of Tribes.

Our desire to hold a consultation reflects our growing familiarity with the automation needs and preferences of Tribes and our desire to seek ideas about how CB can support title IV–E Tribal agencies build information systems that will support their business needs. CB invites Tribal leaders and their representatives to join in a consultation via teleconference to provide input on the following questions:

Questions: Please identify the question to which you are responding. If you have additional comments about SACWIS, please identify them by citing the related section of regulations or program guidance.

(1) What are the obstacles for your Tribe in building a child welfare information system in general and a SACWIS-type system specifically?

(2) What information do you consider critical to managing your child welfare program?

(3) Is there any special information that Tribes need or will need in order to operate child welfare programs funded with title IV–E dollars?

Tribes may also provide written comments through the methods cited in the **ADDRESSES** section, regardless of participation in the teleconference for consultation. Please note that Federal representatives attending the consultation teleconferences will not be able to respond directly during the consultations to questions raised by the participants.

Authority: HHS ACF Tribal Consultation Policy.

Dated: December 22, 2011.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2011–33336 Filed 1–4–12; 8:45 am]

BILLING CODE 4184–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 11–131; DA 11–2025]

Revision of the Commission's Program Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Media Bureau extends the deadline for filing reply comments on the Notice of Proposed Rulemaking (''*NPRM*'') in this proceeding which was published in the **Federal Register** on September 29, 2011. The extension will enable commenters to adequately review and respond to the comments filed in response to the *NPRM.*

DATES: The reply comment period for the proposed rule published September 29, 2011 (76 FR 60675) is extended. Submit reply comments on or before January 11, 2012.

ADDRESSES: You may submit reply comments, identified by MB Docket No. 11–131, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Federal Communications Commission's Electronic Comment Filing System (ECFS) Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* 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.

• *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of the NPRM.

FOR FURTHER INFORMATION CONTACT: David Konczal, *David.Konczal@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in MB Docket No. 11–131, DA 11–2025, adopted and released on December 15, 2011, which

extends the reply comment deadline established in the NPRM published under FCC No. 11–119 at 76 FR 60675, September 29, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Order

1. On August 1, 2011, the Commission released an *NPRM* on revisions to the program carriage rules. The *NPRM* set deadlines for filing comments and reply comments at 60 and 90 days, respectively, after publication of the *NPRM* in the **Federal Register**. A summary of the *NPRM* was published in the **Federal Register** on September 29, 2011 (76 FR 60675). Accordingly, the filing dates were initially established as November 28, 2011 for comments and December 28, 2011 for reply comments.

2. On December 13, 2011, the National Cable & Telecommunications Association (''NCTA''), Media Access Project, and Public Knowledge filed a joint request to extend the reply comment deadline by two weeks, until January 11, 2012. They claim that the comments filed in response to the *NPRM* reflect divergent views and opposing arguments on virtually every issue and note further that the current reply comment deadline falls in the middle of the holiday season. We grant the requested extension. As set forth in Section 1.46 of the Commission's Rules, 47 CFR 1.46, the Commission's policy is that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. In this case, however, an extension of the reply comment period is warranted to enable commenters to adequately review and respond to the comments filed in response to the *NPRM.*

3. Accordingly, *it is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and §§ 0.61, 0.283, and 1.46 of the Commission's rules, 47 CFR 0.61, 0.283, and 1.46, the Motion for Extension of Time filed by NCTA, Media Access Project, and Public Knowledge *is granted,* and the deadline to file reply comments in this proceeding is extended to January 11, 2012.

Federal Communications Commission.

Steven A. Broeckaert,

Senior Deputy Chief, Policy Division, Media Bureau.

[FR Doc. 2011–33847 Filed 1–4–12; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 77, No. 3
Thursday, January 5, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–11–0084]

Specialty Crop Block Grant Program—Farm Bill Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this document announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection under the Specialty Crop Block Grant Program—Farm Bill (SCBGP–FB).

DATES: Comments on this document must be received by March 5, 2012 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at *www.regulations.gov* or sent to Docket Clerk, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0235, 1400 Independence Avenue SW., Washington, DC 20250–0243; or by facsimile to (202) 720–0016. All comments should reference the docket number (AMS–FV–11–0084), the date, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Trista Etzig at the above physical address, by telephone (202) 690–4942, or by email at *mail to: scblockgrants@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Specialty Crop Block Grant Program—Farm Bill.

OMB Number: 0581–0248.

Expiration Date of Approval: 3 years from date of OMB approval.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collection requirements in this request are applied only to those State departments of agriculture who voluntarily participate in the SCBGP–FB. The information collected is needed to certify that grant participants are complying with applicable program regulations. Data collected is the minimum information necessary to effectively carry out the requirements of the program, and to fulfill the intent of section 101 of the Competitiveness Act of 2004, as amended by section 10109 of the Food, Conservation, and Energy Act of 2008, (2008 Farm Bill) (Pub. L. 110–246).

State departments of agriculture who wish to participate in the SCBGP–FB would have to submit the following:

(a) SF–424, ''Application for Federal Assistance,'' (approved under OMB collection number 4040–0004) is required to apply for Federal assistance.

(b) SF–424A, ''Budget Information-Non-Construction Programs,'' (approved under OMB collection number 0348–0044) is required to show each project's budget breakdown.

(c) Form SF–424B, ''Assurances-Non-Construction Programs,'' (approved under OMB collection number 0348–0040) to assure the Federal government of the applicant's legal authority to apply for Federal assistance.

(d) State Plan Narrative. Completed applications must include a State Plan Narrative to show how grant funds will be utilized to enhance the competitiveness of specialty crops.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56 (All 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands).

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 560 hours.

Before funds are dispersed, State departments of agriculture must complete the following forms:

(a) Grant Agreement. The Grant Agreement sets forth the agreed upon responsibilities of AMS project work. It also indicates the agreed upon grant funding dollar amounts and the beginning date and ending date of the project work and the Grant Agreement. One copy of this Grant Agreement is required to be returned to AMS with the grantee's signatures and dated for each grant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 112 hours.

(b) Form SF–270, ''Request for Advance and Reimbursement'' (approved under OMB collection number 0348–0004) is required whenever the grantees request an advance or reimbursement of Federal grant funds. AMS expects that at least three (3) SF–270 forms will be submitted during the grant agreement period.

(c) Annual Performance Report. The Annual Performance Report is required if a grant period is more than one year in length. The Annual Performance Report is written documentation required to notify AMS about the work activities and progress towards completing the grantee's and subgrantee's established project activities, goals and outcomes. AMS expects that at least two (2) Annual Performance Reports will be submitted during the grant agreement period.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 112.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 336 hours.

(d) Final Performance Report. The Final Performance Report is written information required by AMS within 90 days after the ending date of the Grant Agreement. This information is utilized as final documentation of completion of the project activities, goals and outcomes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 336 hours.

(e) Request for Grant Amendment. A State department of agriculture participating in the SCBGP–FB would have to submit a Request for Grant Amendment to AMS if there is a change in key personnel, scope or objectives of the grant, budget changes that exceed more than 20% of a project's total budget, and/or or an extension of the grant period not to exceed three calendar years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 112 hours.

(f) SF–425 ''Federal Financial Report (approved under OMB collection number 0348–0061) is to be completed 90 days after the expiration date of the grant period to comply with various legal and regulatory requirements as described within the form.

(g) Audit Report. A State is required to conduct an audit of SCBGP–FB expenditures and an audit report is required to be submitted to AMS no later than 30 days after completion of the audit.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 168 hours.

Finally, State departments of agriculture are required to retain records pertaining to the SCBGP–FB for 3 years after completion of the grant period or until final resolution of any audit findings or litigation claims relating to the SCBGP–FB. This is a part of normal business practice.

This program would not be maintained by any other agency, therefore, the requested information will not be available from any other existing records.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3540 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The SF–424, SF–424A, and SF–424B forms and State Plan (Narrative) can be completed electronically and are required to be submitted electronically through *www.grants.gov.*

The SF–425 and SF–270 forms can be filled out electronically and submitted electronically.

The Annual Performance Report, Final Performance Report, Audit Report, and Request for Grant Amendment can be submitted electronically. The Grant Agreement requires an original signature and can be submitted by mail.

Comments are invited on: (1) 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) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 22, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–33793 Filed 1–4–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Emergency Food Assistance Program; Availability of Foods for Fiscal Year 2012

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased foods that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under The Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2012. The foods made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies for use in preparing meals and/or for distribution to households for home consumption.

DATES: *Effective Date:* October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ashley Bress, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7501, *et seq.,* and the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Department makes foods available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with section 214 of the EFAA, 7 U.S.C. 7515, 60 percent of each State's share of TEFAP foods is based on the number of people with incomes below the poverty level within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the foods will be used by eligible recipient agencies (ERA) in providing nutrition assistance to those in need, and for allocating foods among those ERAs. States have full discretion in determining the amount of foods that will be made available to ERAs for use in preparing meals and/or for distribution to households for home consumption.

The types of foods the Department expects to make available to States for distribution through TEFAP in FY 2012 are described below.

Surplus Foods

Surplus foods donated for distribution under TEFAP are Commodity Credit Corporation (CCC) foods purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and foods purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of foods typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of foods purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

Approximately $37.5 million in surplus foods acquired in FY 2011 are being delivered to States in FY 2012. These foods include carrots, chicken (leg quarters, thighs/drumsticks), corn, fig pieces, oranges, peaches, pears, pistachios, dried plums, potatoes, and tomato sauce. Other surplus foods may be made available to TEFAP throughout the year. The Department would like to point out that food acquisitions are based on changing agricultural market conditions; therefore, the availability of foods is subject to change.

Purchased Foods

In accordance with section 27 of the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Secretary is directed to purchase about $260.25 million worth of foods in FY 2012 for distribution through TEFAP. These foods are made available to States in addition to those surplus foods which otherwise might be provided to States for distribution under TEFAP.

For FY 2012, the Department anticipates purchasing the following foods for distribution through TEFAP: Dehydrated potatoes, dried plums, raisins, frozen ground beef, frozen whole chicken, frozen ham, frozen turkey roast, blackeye beans, garbanzo beans, great northern beans, light red kidney beans, lentils, lima beans, pinto beans, egg mix, shell eggs, lowfat bakery mix, egg noodles, white and yellow corn grits, spaghetti, macaroni, oats, peanut butter, roasted peanuts, rice, whole grain rotini, vegetable oil, ultra high temperature fluid 1 percent milk, bran flakes, corn flakes, oat cereal, rice cereal, corn cereal, and corn and rice cereal; the following canned items: Green beans, blackeye beans, kidney beans, refried beans, vegetarian beans, carrots, cream corn, whole kernel corn, peas, sliced potatoes, pumpkin, spaghetti sauce, spinach, sweet potatoes, tomatoes, diced tomatoes, tomato sauce, mixed vegetables, tomato soup, vegetable soup, apricots, applesauce, mixed fruit, peaches, pears, beef, beef stew, chicken, pork, and salmon; and the following bottled juices: Apple, cherry apple, cran-apple, grape, grapefruit, orange, and tomato. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of foods or the non-availability of one or more types listed above.

Dated: December 27, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–33673 Filed 1–4–12; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule; Correction

AGENCY: USDA Forest Service.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a notice in the **Federal Register** on December 29, 2011, concerning the intent to establish an advisory committee and call for nominations. The document contained incorrect dates. The published document contained a due date for nominations of February 13, 2012. The correction is February 21, 2012.

FOR FURTHER INFORMATION CONTACT: Tony Tooke, U.S. Department of Agriculture, Forest Service, National Forest System, Ecosystem Management Coordination; telephone: (202) 205–0830, fax: (202) 205–1758, or email: *ttooke@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Correction

In the **Federal Register** of December 29, 2011, in FR doc. 2011–33535, on page 81911, in the first column, correct the ''Dates'' caption to read:

Written nominations must be received by February 21, 2012. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed form AD–755 (Advisory Committee Membership Background Information). The form AD–755 may be obtained from Forest Service contact person or from the following Web site: *http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5203568.pdf* . The package must be sent to the address below.

Dated: December 30, 2011.

Pearlie S. Reed,

Assistant Secretary of Administration.

[FR Doc. 2011–33823 Filed 1–4–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, January 13, 2012; 9:30 a.m. EST.

PLACE: 624 Ninth Street NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda
II. Approval of the December 19, 2011 Meeting Minutes
III. Program Planning Update and discussion of projects:
- Update on 2012 Statutory Enforcement Report planning
- Update on 2012 Trafficking Briefing planning
- Scheduling of 2012 Immigration Briefing
- Review of Concept Papers/Approval

IV. Management and Operations
- Staff Director's report
- Chief of Regional Programs' Report

V. State Advisory Committee Issues:
- Re-Chartering the Hawaii SAC

VI. Adjourn

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: January 3, 2012.

David B. Snyder,

Attorney-Advisor, Alternate Certifying Officer.

[FR Doc. 2012–42 Filed 1–3–12; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Initiation of Anti-Circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Vulcan Threaded Products Inc. (''Petitioner''), the Department of Commerce (the ''Department'') is initiating an anti-circumvention inquiry to determine whether certain imports are circumventing the antidumping duty order on certain steel threaded rod from the People's Republic of China (''PRC'').[1]

DATES: *Effective Date:* January 5, 2012.

FOR FURTHER INFORMATION CONTACT: Toni Dach, 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) 482–1655.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 2011, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.225(i), Petitioner submitted a request for the Department to initiate an anti-circumvention inquiry of Gem-Year Industrial Co., Ltd. (''Gem-Year'') to determine whether double-arming bolts (''DA bolts''), a type of steel threaded rod produced in the PRC containing more than 1.25 percent chromium, are circumventing the *Steel Threaded Rod Order.*[2] In its request, Petitioner contends that Gem-Year's higher-chromium DA bolts are of the same class or kind as the merchandise covered by the *Steel Threaded Rod Order,* and the addition of small amounts of chromium above the 1.25 percent threshold in the scope of the order is a minor alteration that constitutes circumvention.

Scope of the Order

The merchandise covered by the order is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to the order are non-headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of the order are steel threaded rod, bar, or studs, in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheading 7318.15.5050, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the order are: (a) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

Prior Scope Ruling

Among previous scope rulings concerning the *Steel Threaded Rod Order,* the Department on September 10, 2010, responded to a request for a scope ruling by Hubbell Power Systems, Inc. and determined that DA bolts meeting the description of the scope are within the scope of the *Steel Threaded Rod Order.*[3]

Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry

The merchandise subject to this antidumping circumvention inquiry consists of steel threaded rod from the PRC produced by Gem-Year containing greater than 1.25 percent chromium, by weight, and otherwise meeting the requirements of the scope of the *Steel Threaded Rod Order* as listed under the ''Scope of the Order'' section above.

Initiation of Minor Alterations Antidumping Circumvention Proceeding

Section 781(c)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when products which are of the class or kind of merchandise subject to an antidumping duty order have been ''altered in form or appearance in minor respects * * * whether or not included in the same tariff classification.'' The Department notes that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, the Department has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.''[4]

Overall Physical Characteristics

Petitioner maintains that steel threaded rod with the addition of chromium is produced in the same manner and to the same specifications as subject steel threaded rod.[5] Petitioner provides a declaration supporting these claims in its Circumvention Request.[6]

Expectations of the Ultimate Users

Petitioner indicates that it is unaware of any instances where customers would

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009) (''*Steel Threaded Rod Order*'').

[2] *See* the Petitioner's November 17, 2011 submission (''Circumvention Request'') at 2.

[3] *See Notice of Scope Rulings,* 76 FR 10558, 10559 (February 25, 2011).

[4] *See* S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (''In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.'').

[5] *See* Circumvention Request at 16.

[6] *Id.* at 16–17.

expect or request steel threaded rod with small amounts of chromium added, other than to circumvent the order.[7] Petitioner argues that the applicable standard for DA bolts does not address the chemistry of the steel, focusing instead on basic dimensions, zinc coating, and tensile strength, none of which are affected by the additional amounts of chromium.[8]

Use of the Merchandise

Petitioner states that the uses of DA bolts, *i.e.,* fasteners in the utility industry, are typical applications of steel threaded rod.[9]

Channels of Marketing

Petitioner states that the channels of marketing for the chromium-added DA bolts and the subject steel threaded rod are the same, noting that both products are marketed through distributors.[10]

Cost of Modification

Petitioner indicates that the addition of small amounts of chromium involves minimal additional cost compared to the overall costs of the merchandise in question.[11]

Circumstances Under Which the Subject Products Entered the United States

Petitioner argues that entry summary information indicates that the additional chromium was added to deliberately avoid antidumping duties. Petitioner points to documents contained in the entry summary for Gem-Year's entries of higher-chromium DA bolts to support its claim that the chromium content of the DA bolts was manipulated in an attempt to circumvent the order.[12] Because Gem-Year's merchandise would be subject to the PRC-wide deposit rate of 206.00 percent, Petitioner asserts that Gem-Year and its customers have a strong financial incentive to avoid paying antidumping duties.[13]

Timing of the Entries

Petitioner asserts that the addition of chromium after the issuance of the *Steel Threaded Rod Order* and the Department's determination in the related scope request concerning DA bolts indicates that this addition of chromium is an attempt to circumvent the *Steel Threaded Rod Order.*[14]

[7] *Id.* at 17.
[8] *Id.*
[9] *Id.* at 19.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 19–20.
[13] *Id.* at 20.
[14] *Id.* at 20.

Based on the information provided by Petitioner, the Department finds there is sufficient basis to initiate an antidumping anti-circumvention inquiry, pursuant to section 781(c) of the Act, to determine whether the merchandise subject to the inquiry (identified in the ''Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry'' section above) involves a minor alteration to subject merchandise that is so insignificant as to render the resulting merchandise subject to the *Steel Threaded Rod Order.*

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation notice.

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: December 22, 2011.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–33768 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA892

2012 Annual Determination for Sea Turtle Observer Requirement

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

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2012, pursuant to its authority under the Endangered Species Act (ESA). Through an AD, NMFS identifies fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to prevent or reduce prohibited sea turtle takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request, until 2014.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, (301) 713–2322; Ellen Keane, Northeast Region, (978) 282–8476; Dennis Klemm, Southeast Region, (727) 824–5312; Elizabeth Petras, Southwest Region, (562) 980–3238; Kim Maison, Pacific Islands Region, (808) 944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-(800) 877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at *www.nmfs.noaa.gov/pr/species/turtles/regulations.htm* or from any NMFS Regional Office at the addresses listed below:

- NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; or
- NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or

threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the U.S. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for 5 years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to conserve and recover turtles.

2012 Annual Determination

NMFS is providing notification that the agency will not identify additional fisheries to observe for the 2012 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of resources to implement new or expand existing observer programs to focus on sea turtles (50 CFR 222.402(a)(4)). Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers, upon NMFS' request, until 2014. NMFS did not identify additional fisheries to observe in the 2011 AD.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE ANNUAL DETERMINATION

Fishery	Years eligible to carry observers
Trawl Fisheries:	
Atlantic shellfish bottom trawl	2010–2014
Mid-Atlantic bottom trawl	2010–2014
Mid-Atlantic mid-water trawl (including pair trawl)	2010–2014
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2010–2014
Gillnet Fisheries:	
CA halibut, white seabass and other species set gillnet (>3.5 in mesh)	2010–2014
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2010–2014
Chesapeake Bay inshore gillnet	2010–2014
Long Island inshore gillnet	2010–2014
Mid-Atlantic gillnet	2010–2014
North Carolina inshore gillnet	2010–2014
Northeast sink gillnet	2010–2014
Southeast Atlantic gillnet	2010–2014
Trap/Pot Fisheries:	
Atlantic blue crab trap/pot	2010–2014
Atlantic mixed species trap/pot	2010–2014
Northeast/mid-Atlantic American lobster trap/pot	2010–2014
Pound Net/Weir/Seine Fisheries:	
Mid-Atlantic haul/beach seine	2010–2014
Mid-Atlantic menhaden purse seine	2010–2014
U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	2010–2014
Virginia pound net	2010–2014

Dated: December 29, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33852 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA907

Endangered and Threatened Species; Recovery Plan Southern Oregon/ Northern California Coast Coho Salmon Evolutionarily Significant Unit

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability for public review of the draft Recovery Plan (Plan) for the Southern Oregon/Northern California Coast (SONCC) Coho Salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval. In addition, public meetings will be announced as opportunities for providing comments on the Draft Plan (dates to be determined).

DATES: Comments must be received no later than 5 p.m. Pacific daylight time on March 5, 2012. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

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

- *Via email:* *SONCC.Recovery@noaa.gov* (No files larger than 5MB can be accepted).
- *Via U.S. Mail:* Julie Weeder, National Marine Fisheries Service, 1655 Heindon Road, Arcata, CA 95521, Attn: Recovery Coordinator/SONCC Coho Salmon Public Draft Recovery Plan Comments.
- *Hand delivered:* National Marine Fisheries Service, 1655 Heindon Road, Arcata, CA 95521, Attn: Recovery Coordinator/SONCC Coho Salmon Public Draft Recovery Plan Comments. Business hours are 8 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.
- *Via fax:* (707) 825–4840. Please include the following on the cover page of the fax: ''Attn: Recovery Coordinator/ SONCC Coho Salmon Public Draft Recovery Plan Comments.''

FOR FURTHER INFORMATION CONTACT: Julie Weeder ((707) 825–5168), email *julie.weeder@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS is charged with the recovery of Pacific salmon and steelhead species listed under the Endangered Species Act (ESA). Recovery means that listed species and their ecosystems are restored, and their future secured, so that the protections of the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) A description of management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of time and costs required to achieve the plan's goal and the intermediate steps towards that goal. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. NMFS is hereby soliciting relevant information on SONCC Coho Salmon ESU populations and their freshwater/marine habitats. In addition, NMFS is soliciting comment on the contents of the proposed recovery plan.

Persons wishing to review the Draft Plan can obtain an electronic copy (i.e., CD ROM) from Ms. Cynthia Anderson by calling (707) 825–5162 or by emailing a request to *Cynthia.Anderson@noaa.gov* with the subject line ''CD ROM Request for SONCC Coho Salmon Draft Recovery Plan.'' Electronic copies of the Draft Plan are also available on line on the following NMFS Web site: *http://swr.nmfs.noaa.gov/recovery.*

Public Meetings

Public meetings are planned. Information on locations, dates, and times will be posted on the Web site listed above.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 29, 2011.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33850 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NOAA Science Advisory Board. The members will discuss and provide advice on issues outlined in the section on Matters to be Considered.

Time and Date: The meeting is scheduled for: Tuesday, January 31, 2012, from 3–5 p.m. Eastern Standard Time.

ADDRESSES: Conference call. Public access is available at: NOAA, SSMC 3, Room 11836, 1315 East-West Highway Silver Spring, Md.

Status: The meeting will be open to public participation with a 5-minute public comment period from 4:50–4:55 p.m. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of one minute. Written comments should be received in the SAB Executive Director's Office by January 26, 2012 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after January 26, 2012, will be distributed to the SAB, but may not be reviewed prior to the meeting date.

SUPPLEMENTARY INFORMATION: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Matters To Be Considered: The meeting will include the following topics: (1) Review of new members for the Environmental Information Services Working Group (2) Review of renewal of

membership terms for the Ecosystem Sciences and Management Working Group and (3) Update from the Research and Development Portfolio Review Task Force and discussion of next actions. For the latest agenda, please visit the SAB Web site at *http://www.sab.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway Silver Spring, Maryland 20910. (Phone: (301) 734–1156, Fax: (301) 713–1459, Email: *Cynthia.Decker@noaa.gov*).

Dated: December 28, 2011.

Terry Bevels,

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–33774 Filed 1–4–12; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Rules Relating to Regulation of Domestic Exchange-Traded Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of an existing collection.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* 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 rules related to risk disclosure concerning exchange traded commodity options.

DATES: Comments must be submitted on or before March 5, 2012.

ADDRESSES: Comments may be mailed to William Penner, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Ryne Miller, (202) 418–5921; Fax: (202) 418–5536; email: *rmiller@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 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, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Rules Relating to Regulation of Domestic Exchange-Traded Options, OMB Control Number 3038–0007—Extension

The rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Regulation	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Reporting:					
38.3, 38.4, 40.2 and 40.3 (Procedure for designation or self-certification)	13.00	2.00	26.00	25.00	650
33.7—(Risk disclosure)	120.00	115.00	13,800.00	0.08	1,104.00
Subtotal (Reporting requirements)	133.00		13,826.00		1,754.00
Recordkeeping:					
33.8—(Retention of promotional material)	170.00	1.00	170.00	25.00	4,250.00
Subtotal (Recordkeeping requirements)					

ESTIMATED ANNUAL REPORTING BURDEN—Continued

Regulation	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Grand total (Reporting and recordkeeping)	303.00		13,996.00		6,004.00

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: December 30, 2011.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–33841 Filed 1–4–12; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 11, 2012; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: January 3, 2012.

Todd A Stevenson,

Secretary.

[FR Doc. 2012–64 Filed 1–3–12; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0087]

Petition Requesting Exception From the Lead Content Limits; Reopening of the Comment Period

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Comment request.

SUMMARY: The Consumer Product Safety Commission (''Commission'' or ''CPSC'' or ''we'' or ''us'') has received a petition requesting an exception from the 100 ppm lead content limit under section 101(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), as amended by Public Law 112–28. We are reopening the comment period for 30 days.

DATES: Submit comments by February 6, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0087, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through: *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; email: *khatlelid@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under section 101(a) of the CPSIA, consumer products designed or intended primarily for children 12 years old and younger that contain lead content in excess of 100 ppm manufactured after August 12, 2011, are considered to be banned hazardous substances under the Federal Hazardous Substances Act (''FHSA'').

Section 101(b)(1) of the CPSIA provides for a functional purpose exception from lead content limits under certain circumstances. The exception allows us, on our own initiative, or upon petition by an interested party, to exclude a specific product, class of product, material, or component part from the lead limits established for children's products under the CPSIA if, after notice and a hearing, we determine that: (i) The product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with section 101(a) of the CPSIA by removing the excessive lead or by making the lead inaccessible; (ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and (iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse. Under section 101(b)(1)(B) of the CPSIA, there is no measurable adverse effect on public health or safety if the exception will result in no measurable increase in blood lead levels of a child. Given the highly technical nature of the information sought, including data on the lead content of the product and test methods used to obtain those data, we believe that the notice and solicitation

for written comments would provide the most efficient process for obtaining the necessary information, as well as provide adequate opportunity for all interested parties to participate in the proceedings. However, we would have the option to hold a public hearing or public meeting, if appropriate, to determine whether a petition for a functional purpose exception should be granted.

On September 29, 2011, Joseph L. Ertl, Inc., (''petitioner''), submitted a petition requesting an exception from the lead content limit of 100 ppm under section 101(b) of the CPSIA for its die-cast, ride-on pedal tractors, scaled for children ages 3–10 years old. The petitioner states that the components of its pedal tractors are made of aluminum metal die castings, which are the best alloy of choice for pedal tractor production, based on weight, cost, structural properties, surface finish and coatings, corrosion resistance, and bearing properties and wear resistance. The pedal tractor components are manufactured via the aluminum die-casting process. Although the petitioner states that it is able to meet the lead content requirements of 300 ppm for its pedal tractor components, it is unable to meet consistently the 100 ppm lead content limits, due to alloys used in the aluminum die-cast process. Accordingly, the petitioner requests an exception from the 100 ppm lead content limit to continue to manufacture its pedal tractors with components above the 100 ppm lead content limit.

In the **Federal Register** of November 16, 2011 (76 FR 70975) we invited comments on the issues raised by the petition. Interested parties could view a copy of the petition under supporting and related materials identified by Docket No. CPSC–2011–0087, through *http://www.regulations.gov* or on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia12/brief/ertlpetition.pdf* or obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Bethesda, MD 20184; telephone (301) 504–7923.

Recently, however, we learned that part of the petition was omitted inadvertently from the public docket. Accordingly, to give interested parties a meaningful opportunity to comment, we have made the entire petition available for viewing through *http://www.regulations.gov* or on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia12/brief/ertlpetition.pdf.* Interested parties may also obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Bethesda, MD 20184; telephone (301) 504–7923.

Through this notice, we are reopening the comment period to give all interested parties additional time to comment on the petition. Thus, the comment period is reopened until *February 6, 2012.*

Dated: December 28, 2011.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–33631 Filed 1–4–12; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

DATES: *Time and Date of Meeting:* Session I: 1 p.m.–4 p.m., March 22, 2012; Session II: 6 p.m.–9 p.m., March 22, 2012.

PLACE: Three Rivers Convention Center, 7016 West Grandridge Boulevard, Kennewick, Washington 99352.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: In Session I of this public hearing and meeting, the Board will receive testimony from the Department of Energy (DOE) and its contractors concerning the status of actions related to unresolved technical safety issues in the design of the Waste Treatment and Immobilization Plant (WTP). This will include actions discussed in DOE's implementation plan for the Board's Recommendation 2010–2, *Pulse Jet Mixing at the Waste Treatment and Immobilization Plant,* issued on December 17, 2010, and progress in defining the infrastructure needs at the Tank Farms in order to deliver waste safely and efficiently to WTP. During Session II, the Board will receive testimony regarding the status of actions related to DOE's implementation plan for the Board's Recommendation 2011–1, *Safety Culture at the Waste Treatment and Immobilization Plant,* which was issued on June 9, 2011. The Board will also examine the link between the safety culture of DOE and its contractors and the ability of the WTP project to identify and resolve technical issues, such as those discussed in Session I, in a timely manner. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

FOR FURTHER INFORMATION CONTACT: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. The Board is setting aside time at the end of each session of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on March 16, 2012, will be scheduled to speak at the session of the hearing most relevant to their presentations. At the beginning of Session I, the Board will post a schedule for speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC, office. The Board will hold the record open until April 23, 2012, for the receipt of additional materials. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn

the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: January 3, 2012.

Peter S. Winokur,

Chairman.

[FR Doc. 2012–44 Filed 1–3–12; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Disability and Rehabilitation Research Projects and Centers Program—Field Initiated Projects Program

AGENCY: Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research (NIDRR), Department of Education.

ACTION: Notice.

Overview Information

Disability and Rehabilitation Research Projects and Centers Program—Field Initiated Projects Program

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133G–1 (Research) and 84.133G–2 (Development).

DATES: *Applications Available:* January 5, 2012.

Deadline for Transmittal of Applications: March 5, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Field Initiated (FI) Projects program is to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. Another purpose of the FI Projects program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

NIDRR makes two types of awards under the FI Projects program: Research grants (CFDA 84.133G–1) and development grants (CFDA 84.133G–2).

In carrying out a research activity under an FI Project research grant, a grantee must identify one or more hypotheses or research questions and, based on the hypotheses or research questions identified, perform an intensive, systematic study directed toward producing (1) new scientific knowledge, or (2) better understanding of the subject, problem studied, or body of knowledge.

In carrying out a development activity under an FI Project development grant, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods, including designing and developing prototypes and processes, that are beneficial to the target population. ''Target population'' means the group of individuals, organizations, or other entities expected to be affected by the project. There may be more than one target population because a project may affect those who receive services, provide services, or administer services.

Note: Different selection criteria are used for FI Project research grants (84.133G–1) and development grants (84.133G–2). Applicants must clearly indicate in the application whether they are applying for a research grant (84.133G–1) or a development grant (84.133G–2) and must address the selection criteria relevant for their grant type. Without exception, NIDRR will review each application based on the grant designation made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation as a research grant or a development grant.

Note: This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to (1) improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Program Authority: 29 U.S.C. 764.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,000,000.

Estimated Range of Awards: $195,000 to $200,000.

Estimated Average Size of Awards: $200,000.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period exceeding 36 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register.**

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62 and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–(877) 433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–(877) 576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this

competition as follows: CFDA number 84.133G–1 or 84.133G–2.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

Applicants should consult NIDRR's Long-Range Plan when preparing their applications. The Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics.

3. *Submission Dates and Times:*

Applications Available: January 5, 2012.

Deadline for Transmittal of Applications: March 5, 2012.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CRR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from DUN and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/aapplicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the FI Projects program, CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development), must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under

Exception to Electronic Submission Requirement.

You may access the electronic grant application for the FI Projects program—CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development)—at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133G).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Specifically, do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–(800) 518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Fax: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and 350.55 and are listed in the application package.

Note: There are two different sets of selection criteria for the FI projects program: One set to evaluate applications proposing to carry out research activities (CFDA 84.133G–1), and a second set to evaluate applications proposing to carry out development activities (CFDA 84.133G–2). Each applicant will be evaluated using the selection criteria for the type of project the applicant designates in its application.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their applications a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section is voluntary, except where required by the selection criteria listed in the application package.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information,

as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

Note: NIDRR will provide information by letter to grantees on how and when to submit the performance report.

4. *Performance Measures:* NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed and/or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award that are based on NIDRR-funded research and development activities and are in refereed journals.
- The percentage of new grants that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov*. Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov*.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800) 877–8339.

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: 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: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 30, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–33807 Filed 1–4–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: January 23, 2012.

Time: 9 a.m. to 4:30 p.m. Eastern Standard Time.

ADDRESSES: The Commission will meet in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW, Washington, DC 20202, in Barnard Auditorium.

FOR FURTHER INFORMATION CONTACT: Jim Eichner, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Email: *equitycommission@ed.gov*. Telephone: (202) 453–5945.

SUPPLEMENTARY INFORMATION: On January 23, 2012 from 9 a.m. to 4:30 p.m. Eastern Standard Time, the Equity and Excellence Commission will hold an open meeting in Washington, DC in the Barnard Auditorium at the U.S. Department of Education's main building at 400 Maryland Avenue SW., Washington, DC 20202.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's January 23, 2012 meeting will include discussion of particular language for certain portions of the report and reaching consensus on particular recommendations. The Commission may have breakout sessions, most likely during the second half of the meeting, to discuss particular issues. The Commission plans to discuss the establishment of two or more subcommittees to discuss

recommendations the Commission may make regarding teachers and school leaders; what documents and information should be included in the materials that will supplement the main Commission report; and/or other subjects within the Commission's charter. If time permits, these subcommittees may meet in the afternoon to outline their specific tasks and timing for subsequent meetings. Due to time constraints, there will not be a public comment period, but, individuals wishing to provide comments may contact the Equity Commission via email at *equitycommission@ed.gov*. For comments related to the upcoming meeting, please submit comments no later than January 13, 2012.

Individuals interested in attending the meeting must register in advance because seating may be limited. Please contact Jim Eichner at (202) 453–5945 or by email at *equitycommission@ed.gov*. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Jim Eichner at (202) 245–5945 no later than January 13, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. Eastern Standard Time.

Russlynn Ali,

Assistant Secretary, Office for Civil Rights.

[FR Doc. 2011–33800 Filed 1–4–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 28, 2012, 9 a.m.–5:45 p.m. and Wednesday, February 29, 2012, 9 a.m.–12 p.m.

ADDRESSES: Doubletree Bethesda Hotel and Executive Meeting Center, 8120 Wisconsin Avenue Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Edmund J. Synakowski, Designated Federal Officer, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: (301) 903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To complete the charge given to the Committee in the letter from the Director, Office of Science, dated July 22, 2011, to respond to the following questions:

1. What areas of research on new international facilities provide compelling scientific opportunities for US researchers over the next 10–20 years?
2. What research modes would best facilitate international research collaborations in plasma and fusion sciences?
3. What areas of research in materials science and technology provide compelling opportunities for US researchers in the near term and in the ITER era?

Tentative Agenda

February 28, 2012, 9 a.m.–5:45 p.m.

- DOE/SC perspective and FY13 Congressional Budget Request.
- FES perspective and FY 2013 Congressional Budget Request for FES.
- Briefing on the Chinese Fusion Program.
- Basic Research Directions using the National Ignition Facility.
- Status of ITER Project.
- Report from the Subcommittee dealing with opportunities for collaborations on new tokamaks and stellarators overseas AND research modes that best facilitate international collaborations in plasma and fusion science.

February 29, 2012, 9 a.m.–12 p.m.

- Report from the Subcommittee dealing with materials science and technology research opportunities.
- Public Comments.

Note: The FESAC meeting will be broadcast live on the Internet. You may find out how to access this broadcast by going to the following site prior to the start of the meeting. A video record of the meeting, including the presentations that are made will be archived at this Web site after the meeting ends: *http://doe.granicus.com/ViewPublisher.php?view_id=3.*

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Dr. Ed Synakowski at (301) 903–8584 (fax) or *Ed.synakowski@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements during the public comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days on the Fusion Energy Sciences Advisory Committee Web site at: *http://www.science.doe.gov/ofes/fesac.shtml.*

Issued at Washington, DC, on December 29, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–33801 Filed 1–4–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind Plant Performance—Public Meeting on Modeling and Testing Needs for Complex Air Flow Characterization

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting for interested parties to provide DOE information on modeling needs and experimental validation techniques for complex flow phenomena in and around off-shore and on-shore utility-scale wind power plants. DOE is requesting this information to support the development of cost-effective wind power deployment.

DATES: The meeting will be held Tuesday, January 17, 2012, from 7:30 a.m. to 5 p.m., and Wednesday, January 18, 2012, 7:30 a.m. to 5 p.m.

ADDRESSES: University Memorial Center at the University of Colorado, Boulder, 1669 Euclid Avenue, Boulder, CO 80309.

FOR FURTHER INFORMATION CONTACT: Mark Higgins at *mark.higgins@ee.doe.gov*. EE–2B, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for DOE to obtain input on existing gaps and future opportunities in regards to complex flow modeling and experimental validation. Ultimately, research in this area may lead to significant improvements in wind plant efficiency and performance, leading to a reduced cost of energy for wind power. The meeting is an opportunity for participants to provide, based on their individual experience, information and facts regarding this topic. It is not the object of this session to obtain any group position or consensus. Rather, DOE is seeking as many recommendations as possible from all individuals at this meeting.

The public meeting will consist of an initial plenary session in which invited speakers will survey available information and needs for various applications related to complex flow modeling and validation testing. For the remainder of the meeting, breakout groups will be used to provide participants an opportunity to present to DOE information on specific areas regarding existing gaps in observations and computational products. These groups will be an opportunity to provide comment on information needs for the following topics:

1. Wind Turbine Scale Modeling and Validation Requirements

Participants will examine inflow and outflow characteristics in the vicinity of a single wind turbine, as well as the implications for aerodynamic loading of the rotor and overall structure. Several temporal and spatial scales shall be considered.

2. Wind Plant Scale Modeling and Validation Requirements

Participants will examine complex aerodynamic phenomena in, around, and through wind plants, including turbine-wake interaction, wake-wake interaction, complex terrain, and turbulence effects. Several temporal and spatial scales shall be considered.

3. Regional Scale Modeling and Validation Requirements

Participants will examine the meteorological effects at the regional, multi-wind plant scale. This exploration of atmospheric science topics shall include model nesting, long-term data collection requirements, and down-wind effects of wind plants.

4. Experimental Data Validation Techniques

Participants will examine the requirements for, as well as the feasibility and efficacy of, existing and future experimental techniques for cost effective, high fidelity data collection. Both field and laboratory experiments will be explored.

This meeting is intended to collect information from individuals involved in planning, deployment, operation, and regulation of wind energy projects, individuals involved in meteorological and oceanic disciplines relevant to offshore and onshore wind energy, and interested members of the public. However, the meeting will not focus on environmental impact or management issues, which are being addressed by separate efforts. While participation is open to all interested parties, the breakout structure of the meeting will limit its overall size to about 80 participants. When the meeting is fully subscribed, registration will be closed.

Please email Raphael Tisch at *Raphael.Tisch@ee.doe.gov* with registration inquiries.

TENTATIVE AGENDA

[Subject To Change]

Day 1	
7:30 a.m.–8 a.m.	Registration and Continental Breakfast.
8 a.m.—8:30 a.m.	Plenary Session #1: Welcome and Introduction.
8:30 a.m.–9:30 a.m.	Plenary Session #2: Overview of Break-Out Group Topics.
9:30 a.m.–10 a.m.	Form Break-Out Groups.
10 a.m.–10:20 a.m.	Break.
10:20 a.m.–12 p.m.	Break-Out Group Session #1: Sub-topic Issue.
12 p.m.–1 p.m.	Lunch.
1 p.m.–3 p.m.	Break-Out Group Session #2: Sub-topic Issue.
3 p.m.–3:20 p.m.	Break.
3:20 p.m.–5 p.m.	Break-Out Group Session #3: Open Comments.
Day 2	
7:30 a.m.–8 a.m.	Registration and Continental Breakfast.
8 a.m.–8:30 a.m.	Plenary Session: Day 1 Progress Report.
8:30 a.m.–9:30 a.m.	Break-Out Group Session #4: Wrap-up Comments.
9:30 a.m.–10 a.m.	Break-Out Group Session #5: Prep for Plenary Discussion.
10 a.m.–10:20 a.m.	Break.
10:20 a.m.–12 p.m.	Plenary Session #3: Break-Out Group Overviews.
12 p.m.–1 p.m.	Lunch.

TENTATIVE AGENDA—Continued

[Subject To Change]

1 p.m.–3 p.m.	Plenary Session #4: Open Comments and Q&A.
3 p.m.–3:20 p.m.	Break.
3:20 p.m.–5 p.m.	Plenary Session #3: Summary.

Registration and Accommodations

A room-block for meeting participants has been established at the Boulderado, the Boulder Marriott, and Millennium Harvest House.

Issued in Washington, DC on December 27, 2011.

Jose Zayas,

Program Manager, Wind and Hydropower Technologies, Energy Efficiency and Renewable Energy, Department of Energy.

[FR Doc. 2011–33802 Filed 1–4–12; 8:45 am]

BILLING CODE 6450–01–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: ER10–2278–001; ER10–2277–001; ER10–3203–001.
Applicants: Cogentrix Virginia Leasing Corporation.
Description: Supplement to Updated Market Power Analysis and Request for Category 1 Seller Status of Portsmouth Genco, LLC, et al.
Filed Date: 12/28/11.
Accession Number: 20111228–5033.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER10–2566–002.
Applicants: Duke Energy Carolinas, LLC.
Description: Notice of change in status of Duke Energy Carolinas, LLC.
Filed Date: 12/27/11.
Accession Number: 20111227–5124.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: ER12–698–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3159; Queue No. W2–073 to be effective 12/1/2011.
Filed Date: 12/27/11.
Accession Number: 20111227–5094.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: ER12–699–000.
Applicants: ALLETE, Inc.
Description: Notice of Termination of ALLETE, Inc.—Superior Water, Light and Power Company ESA.
Filed Date: 12/27/11.

Accession Number: 20111227–5121.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: ER12–700–000.
Applicants: Central Vermont Public Service Corporati, ISO New England Inc.
Description: CVPS, ISO–NE and Public Serv. Co of NH Local Service Agreement No. 69 to be effective 1/1/2012.
Filed Date: 12/28/11.
Accession Number: 20111228–5011.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–701–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO Tariff Revisions re: Coordinated Transaction Scheduling to be effective 12/31/9998.
Filed Date: 12/28/11.
Accession Number: 20111228–5026.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–702–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.15: Termination of CEP Funding Point to Point Transmission Agreements to be effective 1/12/2012.
Filed Date: 12/28/11.
Accession Number: 20111228–5035.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–703–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3168 ? PJM Queue # W2–049 to be effective 11/28/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5065.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–704–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Lathrop Irrigation District IA and WDT SA to be effective 1/1/2012.
Filed Date: 12/28/11.
Accession Number: 20111228–5077.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–705–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of a Notice of Succession to be effective 2/28/2012.
Filed Date: 12/28/11.
Accession Number: 20111228–5079.
Comments Due: 5 p.m. ET 1/18/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–5–000.
Applicants: The AES Corporation.
Description: FERC–65B Notice of Material Change in Facts for The AES Corporation.
Filed Date: 12/28/11.
Accession Number: 20111228–5029.
Comments Due: 5 p.m. ET 1/18/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 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: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33828 Filed 1–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA10–13–000]

ITC Holdings Corp.; Notice of Paper Hearing Procedure

Take notice that on October 31, 2011, ITC Holdings Corp. and ITC Midwest LLC (collectively, ITC) filed a request for Commission review of certain findings and recommendations in the September 30, 2011 Audit Report (Audit Report) in this docket issued by the Director of the Office of Enforcement under authority delegated to him by section 375.311 of the Commission's regulations, 18 CFR 375.311 (2011). ITC submitted its request for review under Part 41 of the Commission's regulations, 18 CFR Part 41.2. In accordance with section 41.3, ITC requested the use of shortened procedures. Pursuant to section 41.3, the Commission directs the commencement of a paper hearing. The Commission further provides clarification on the scope of the paper hearing.

ITC's filing states that it challenges the Audit Report's findings that ITC Midwest ''improperly recovered from customers through formula rate billings amounts associated with the tax effects of amortized goodwill reported in Account 211, Miscellaneous Paid-In Capital. It also over-accrued its allowance for funds used during construction (AFUDC).'' ITC also challenges recommendations 2–4 in the Audit Report:

2. Remove the overstated equity amounts associated with the tax effects of amortized goodwill reported in Account 211. File all correcting entries and supporting documentation with the Division of Audits within 30 days of the issuance of a final audit report in this docket.

3. Record and file, with supporting documentation, all correcting entries and calculations to correct all account balances affected by the over-accrual of AFUDC.

4. Adjust formula rate billings, as appropriate, for amounts inappropriately recovered from customers associated with the tax effects of amortized goodwill and related over-accrual of AFUDC. Compute interest on the adjustments in accordance with 18 CFR 35.19a. File a refund analysis with the Commission within 30 days of the issuance of a final audit report in this docket.

The scope of the paper hearing is limited to these challenged findings and recommendations.

In accordance with section 41.3, ITC and any other interested entity, including the Commission staff, shall file, within 45 days of this notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda may be filed by participants who filed initial memoranda. Reply memoranda must be filed within 20 days of the due date for initial memoranda. Pursuant to section 41.3, subpart T of Part 385 of the Commission's regulations shall apply to all filings. Further, pursuant to section 41.4, each entity's memorandum should set out the facts and argument as prescribed for briefs in 18 CFR 385.706 (2011). Section 41.5 also requires that the facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit.

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: December 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33829 Filed 1–4–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9616–1]

Control of Emissions From New Highway Vehicles and Engines; Approval of New Scheduled Maintenance for Selective Catalytic Reduction Technologies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: This notice announces that EPA has granted certain diesel vehicle and engine manufacturers' requests for approval of emission-related maintenance and scheduled maintenance intervals for replenishment of reducing agent in connection with their use of selective catalytic reduction (SCR) technologies. EPA's approval pertains to the use of SCR with 2011 and later model year (MY) diesel-fueled light-duty vehicles and light-duty trucks along with medium-duty passenger vehicles and chassis-certified diesel vehicles up to 14,000 pounds gross vehicle weight (GVW) and 2012 and later MY heavy-duty diesel engines.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2800. Email: *dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA adopted new emission standards for light-duty vehicles on February 10, 2000.[1] At that time, EPA established an emission standard of 0.07 grams per mile for each manufacturer's average full life NO_X emissions of its vehicles in each model year. For heavy-duty vehicles and engines, EPA published a rule setting stringent new requirements on January 18, 2001.[2] Among other requirements, the diesel engine NO_X emission standard was set at 0.20 grams per brake horsepower-hour (g/bhp-hr), to be phased-in between the 2007 and 2010 model years.

Diesel vehicle and engine manufacturers began planning to meet those requirements by optimizing engine designs for low emissions and adding high-efficiency aftertreatment systems. Manufacturers examined the use of several different types of NO_X reduction technologies, including NO_X absorbers, exhaust gas recirculation, and selective catalytic reduction (SCR). SCR systems use a nitrogen-containing reducing agent that usually contains urea and is known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas upstream of a catalyst. For continued functioning of the systems, the reducing agent needs to be replenished periodically by refilling the DEF tank.

Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative, or refueling emission deterioration factors is classified as either emission-related or non-emission-related and scheduled or un-scheduled. Any emission-related scheduled maintenance must be technologically necessary to ensure in-use compliance with the emission standards. Manufacturers must demonstrate to EPA that all of the emission-related maintenance to be performed is technologically necessary and must be approved prior to being performed or being included in maintenance instructions provided to purchasers. 40 CFR 86.094–25(b)(3), 86.094–25(b)(4), 86.1834–01(b)(3) and 86.1834–01(b)(4) establish minimum allowable maintenance intervals for various emission-related technologies. EPA determined that emission-related maintenance for the specified technologies at intervals shorter than those listed in paragraphs (b)(3) and (b)(4) are not technologically necessary, except as provided for in paragraphs (b)(7). Paragraphs (b)(7) of those regulatory sections allows manufacturers to request new scheduled maintenance and maintenance intervals or a change to existing scheduled maintenance interval, including an interval shorter than that prescribed in paragraphs (b)(3) and (b)(4). For light-duty, medium-duty, and heavy-duty diesel-cycle engines, emission-related maintenance for certain emission-related components cannot occur before 100,000 miles of use.[3] Thereafter, emission-related maintenance cannot again occur before 100,000 mile intervals for light heavy-duty engines, or before 150,000 mile intervals for medium and heavy heavy-duty engines.[4]

Pursuant to 40 CFR 86.1834–01(b)(7), a manufacturer must submit a request to EPA for approval of any new scheduled maintenance that it wishes to perform during durability determination and recommend to purchasers. New scheduled maintenance is maintenance that did not exist prior to the 1980 model year (such as DEF refills), including that which is the direct result of the implementation of new technology not found in production prior to the 1980 model year (such as SCR technology). In their approval requests to EPA, manufacturers are required to submit a variety of information, including a recommendation as to the maintenance category (*i.e.,* emission-related or non-emission-related, and critical or non-critical). If the suggested maintenance is emission-related, manufacturers must indicate the maximum feasible maintenance interval. Manufacturers must also provide detailed evidence, data, or other substantiation supporting the need for the new scheduled maintenance, the categorization of such maintenance, and the suggested interval, if the maintenance is emission-related.

If EPA approves a request for new scheduled maintenance, the Agency then designates that maintenance as emission-related or non-emission-related. For emission-related maintenance, EPA will further designate that maintenance as critical or non-critical. A designation of critical maintenance will be made if the component receiving the maintenance meets the regulatory definition of critical emission-related component in 40 CFR 86.1834–01(b)(6). Critical emission-related components include catalytic converters. 40 CFR 86.1834–01(b)(6) requires that critical emission-related maintenance must have a reasonable likelihood of being performed in use, as shown by the manufacturer.[5] Examples of

[1] 65 FR 6734 (February 10, 2000).

[2] 66 FR 5002 (January 18, 2001).

[3] 40 CFR 86.1834–01(b)(4)(ii) and 40 CFR 86.004–25(b)(4)(iii).

[4] *Id.*

[5] 40 CFR 86.094(b)(6)(ii) and 86.1834–01(b)(6)(ii). Both sections present the following conditions as acceptable of having a reasonable likelihood that the maintenance item will be performed in-use:

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s)

demonstrations that maintenance will have a reasonable likelihood of being performed in use include: Data establishing that a vehicle's engine performance will deteriorate to an unacceptable point due to poor emissions performance, survey data demonstrating an eighty percent confidence level that maintenance is in fact performed in use, and installation of a clearly displayed signal system to alert drivers that maintenance is required. When approving a new scheduled maintenance request, EPA also establishes a technologically necessary maintenance interval, based on the evidence submitted by industry and any other information available to the Agency.

In 2007, EPA issued guidance indicating how the above-described regulatory requirements for allowable maintenance could impact EPA certification decisions regarding implementation of SCR technologies for light-duty and heavy-duty diesel vehicles and engines.[6] That guidance announced that EPA would consider service operations performed on SCR systems to be critical emission-related scheduled maintenance. We stated our belief that because catalysts are listed in the (b)(3) and (b)(4) provisions as critical emission-related components, and lack of replenishing agent renders SCR catalysts inoperative, SCR system maintenance would meet the definition of critical emission-related maintenance. Therefore, allowable maintenance requirements would apply to SCR systems, including SCR catalysts, reducing agent, reducing agent storage tanks, dosing valves, and all lines and hoses. Additionally, because manufacturers indicated that packaging constraints would prevent them from being able to equip their vehicles with reducing agent storage tanks of sufficient size to allow reducing agent replenishment to comply with the general maintenance intervals of 100,000 or 150,000 miles, EPA clarified that manufacturers would likely need to request a change to the scheduled maintenance interval pursuant to the (b)(7) provision.

In that same 2007 guidance, EPA also stated that an SCR system utilizing a reducing agent that needs to be periodically replenished could be an adjustable parameter as set forth in 40 CFR 86.094–22(e)(1) and 86.1833–01(a)(1). Those regulatory provisions establish the requirements for determining the physically adjustable ranges of parameters, and EPA's 2007 guidance addressed its determination under the regulations that operation without DEF is within the scope of such ranges. EPA's 2007 guidance also provided industry-wide notice that SCR system designs and information submitted by manufacturers during certification could be used to provide EPA with assurance that DEF levels will remain at proper ranges during the operation of their vehicles and engines while in use.[7]

II. Previous Model Year Approval of New Scheduled Maintenance for SCR Systems

In 2009, EPA approved manufacturer-specific and industry-wide new scheduled maintenance interval requests for diesel-cycle motor vehicles and motor vehicle engines equipped with SCR systems.[8] At that time, EPA stated that:

> * * * SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills. Requests from manufacturers for new scheduled maintenance intervals must include: (1) Detailed evidence supporting the need for the maintenance requested and (2) supporting data or other substantiation for the recommended maintenance category and for the interval suggested for the emission maintenance. Any emission-related maintenance must be technologically necessary to assure in-use compliance with the emission standards since minimum service intervals are established in part to ensure that the control of emissions is not compromised by a manufacturer's overly frequent scheduling of emission-related maintenance.

Upon review of industry-wide and manufacturer-specific evidence and supporting data, EPA approved new scheduled maintenance intervals for DEF equal to the scheduled oil change interval for light-duty vehicles and trucks for the 2009 and 2010 model years. For heavy-duty vehicles and engines through the 2011 model year, EPA approved new scheduled maintenance intervals for DEF tanks based on ratios to a given vehicle's fuel capacity. Vocational heavy-duty vehicles (*e.g.,* dump trucks, concrete mixers, refuse trucks, and other centrally-fueled vehicles) were permitted a DEF tank maintenance interval no less than the vehicle's fuel capacity (*i.e.,* a 1:1 ratio of DEF refill to fuel refill). For other heavy-duty vehicles, a longer interval was approved depending upon whether the vehicle was equipped with a DEF level indicator that would be constantly viewable by the operator. For those heavy-duty vehicles with a DEF level indicator, EPA approved a DEF tank refill interval no less than twice the range of the vehicle's fuel capacity (*i.e.,* a 2:1 ratio). For those heavy-duty vehicles without a DEF level indicator, EPA approved a DEF tank refill interval no less than three times the range of the vehicle's fuel capacity (*i.e.,* a 3:1 ratio).

When evaluating the evidence, data, and justifications presented by manufacturers to support their requested intervals, EPA identified as significant the impact a larger sized DEF tank would have on vehicle design and vehicle weight. To merely accommodate the inclusion of a DEF tank into vehicle design, heavy-duty vehicle manufacturers had to redesign their configurations by taking such measures as reducing the number of batteries, designing space-saver configurations,

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message ''maintenance needed'' or ''check engine,'', or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (b)(6)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.087–38.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

[6] U.S. Environmental Protection Agency, CISD 07–07, ''Dear Manufacturer Letter Regarding Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalytic Reduction (SCR) Technologies,'' March 27, 2007, *available at: http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=16677&flag=1.*

[7] EPA issued guidance on December 30, 2009. U.S. Environmental Protection Agency, Dear Manufacturer Letter regarding ''Revised Guidance for Certification of Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR)Technologies,'' December 30, 2009, reference number CISD–09–04 (HDDE), *available at http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=20532&flag=1.*

[8] 74 FR 57672 (November 9, 2009).

lengthening frame rails, moving compressed air tanks inside the frame rails, and redesigning fuel tank configurations. Light-duty car and truck manufacturers had similar vehicle design issues related to their inherently space constrained vehicles: they had to choose whether to reduce interior vehicle space or find a place to accommodate a DEF tank in the engine compartment of vehicle's undercarriage. Aside from vehicle design issues, the addition of a large DEF tank onto any given vehicle represents a significant addition of weight to the vehicle. The addition of a significant amount of weight to a given vehicle, in turn, presents its own concerns: added vehicle weight more quickly deteriorates engine performance, and added vehicle weight decreases fuel economy. With those considerations in mind, EPA announced its approval of the requested maintenance intervals:

> After reviewing this data and information, EPA believes that longer refill intervals than those noted above would require larger and heavier DEF tanks, and the design and engineering work performed by manufacturers thus far indicate that the recommended DEF refill intervals noted above approximate the maximum feasible maintenance intervals associated with reasonable DEF tank sizes. The maintenance intervals recommended ensure that the functions and operational efficiency of such vehicles are not overly compromised. Based on this information we believe the intervals noted above are warranted.[9]

EPA's 2009 approval also noted that, ''while not a specific criterion under paragraph (b)(7) of the regulations, because DEF refill maintenance is considered 'critical emission-related maintenance,' paragraph (b)(6) requires that there be a reasonable likelihood that the DEF maintenance refill will be performed in use.'' [10] EPA then noted the number of means available to make such a showing, including a clearly displayed visible signal system or the presentation of supporting data.

III. Current Requests for New Scheduled Maintenance for SCR Systems

A. Light-Duty Requests

1. Alliance of Automobile Manufacturers Request

EPA has received information from the Alliance of Automobile Manufacturers (the ''Alliance''), that requested re-approval of new scheduled maintenance for DEF refilling at service intervals (*i.e.,* oil change intervals) for light-duty vehicles and light-duty trucks (and heavy-duty engines that are chassis-certified for NO_X) equipped with SCR systems.[11] The Alliance presented several reasons why the SCR maintenance interval should be equivalent to the service interval, including: ''vehicles will be designed and equipped to ensure vehicle compliance with emission standards; DEF will be readily available and accessible to drivers; maintenance is likely to be performed; there are engineering constraints on packaging a large DEF tank on light duty vehicles; and there is a significant penalty on fuel economy and performance associated with carrying both a larger DEF tank and the weight of a large amount of DEF.''

With regard to the engineering constraints associated with packaging a large quantity of DEF on light duty vehicles, the Alliance notes that it is impractical to install a DEF tank of sufficient size to achieve a 100,000 mile scheduled maintenance interval. ''Light duty vehicles are constrained in the amount of space that can be dedicated to a DEF tank. In addition to the DEF tank, SCR vehicles must package an SCR catalyst, SCR mixer and DEF dosing and heating mechanisms.'' The Alliance cites an example of a current production vehicle that provides a 6.1 gallon DEF tank to achieve a 10,000 mile change interval ratio tied to the oil change interval. To accommodate a 100,000 mile maintenance requirement would require 60 gallons of DEF and would take approximately 8 cubic feet of space—and would also be almost equivalent to installing 4 extra fuel tanks. ''To reduce the existing usable volume to such an extent would result in an uncompetitive vehicle in terms of usable passenger or cargo volume.''

With regard to the Alliance's concerns regarding the potential for a significant penalty on fuel economy and performance associated with carrying both a larger DEF tank and the weight of a large amount of DEF, they note the simple impracticability for light duty vehicles to carry the weight of a DEF tank sufficient in size to achieve a 100,000 mile maintenance interval. Noting that such a tank could weigh as much as 540 lbs it could affect fuel economy almost as much as 10% on a 3800 lb curb weight vehicle. The Alliance also notes similar handling performance (acceleration, braking, and turning) along with passenger space, cargo carrying and/or towing capacity.

2. Ford Request

EPA has received information from Ford (regarding its chassis-certified vehicles) that is similar to the concerns raised by the Alliance. In addition, Ford notes that by attempting to go to a longer service interval, for example a 16–20 gallon DEF tank to meet a two oil change interval, would not be feasible with the space limitations and performance requirements that are necessary for typical medium-duty vehicle (chassis-certified) design. In addition to the market concerns associated with a loss in fuel capacity, cargo or truck bed space due to a larger DEF tank not being acceptable to its customers, Ford also notes the ''hard-point'' packaging issues with attempting to place a large DEF tank in the engine compartment or in the vehicles undercarriage.[12]

3. Isuzu Request

EPA also received information from Isuzu for its medium-duty vehicle (chassis-certified vehicles with GVW of 8,501 to 10,000 pounds) engine families. Isuzu requested a maintenance interval based on the rate of DEF consumption. Isuzu presented that the DEF consumption rate of 2% the rate of diesel fuel consumption renders it ''impossible'' to equip a vehicle with a DEF tank large enough to operate for the full 120,000 mile maintenance interval without DEF. Isuzu requested its interval based on reasons of technological necessity, including maintenance is likely to be performed on schedule, there is limited space available on vehicles for a large DEF tank, the physical properties of DEF present limitations, and DEF is publicly and readily available to drivers.

B. Heavy-Duty Requests

1. Engine Manufacturers Association Request

The Engine Manufacturers Association (''EMA'') renewed its previous request for maintenance intervals for DEF refill for heavy-duty on-highway diesel fueled engines and vehicles.[13] EMA presents that the

[9] 74 FR 57671, 57674 (November 9, 2009).

[10] *See* 40 CFR 86.1834–01(b)(6)(ii) and 86.094–25(b)(6)(ii).

[11] The Alliance represents BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota, and Volkswagen. EPA also received similar information from Mahindra.

[12] Ford notes the undercarriage is already fully utilized with the engine, exhaust system, catalytic converters, mufflers, fuel tank, etc severely limiting any available space for a DEF tank. Ford also notes that DEF tanks represent a significant weight challenge which affects performance and fuel efficiency. To increase a DEF tank for every 2 oil change interval would increase a tank weight by 72 lbs as one example.

[13] EMA members include AGCO Corporation, American Honda Motor Company, Inc., Briggs & Stratton Corporation, Caterpillar Inc., Chrysler Group LLC, Cummins Inc., Daimler Trucks North America LLC, Deere & Company, DEUTZ Corporation, Dresser Waukesha, Fiat Powertrain

determinations of technological necessity that EPA made in 2009 still apply today for DEF refill intervals.[14] Specifically, EMA believes that ''while the SCR-related urea infrastructure has continued to develop, the space and weight constraints that are inherent to the design and operation of [heavy-duty on-highway] vehicles, and the underlying DEF consumption rate, have not changed. As a result, the need and justification for the previously-approved reduced DEF maintenance intervals also have not changed.'' EMA requests that EPA's previously approved new scheduled maintenance intervals for DEF be extended for the 2012 and later model years.[15]

2. Volvo Request

By letter dated April 28, 2011, Volvo Powertrain North America and Volvo Powertrain Japan (collectively, ''Volvo'') submitted a request that EPA extend its previous approval of alternative scheduled maintenance intervals for DEF tanks used in SCR systems. Volvo believes that the intervals EPA previously approved remain technologically necessary, ''as nothing about the design, constraints or functionality of Volvo vehicles and engines has changed so as to permit the use of larger tanks.'' Volvo further states that ''The inherent nature of vehicle space and weight constraints makes significantly larger DEF tanks infeasible on a practical basis. That said, larger DEF tanks also are not necessary in light of systems Volvo has developed to ensure that vehicle operators refill DEF tanks.'' Volvo states that to ensure efficient and practical operation its trucks are designed in such a way that they necessarily have space and weight constraints. Thus, there are inherent limits on the size of add-on components, such as DEF tanks, that can be installed on the vehicles and such limits are unavoidable. In this context Volvo states that its trucks are designed to operate using DEF at all times and that the size of the DEF tanks, like the vehicle's fuel tank, dictates the vehicle's range of operation. Volvo maintains that the 2:1 ratio remains technologically necessary for model year 2012 engines and vehicles as nothing about the design, constraints or functionality of Volvo vehicles and engines has changed (since the 2009 approval) so as to permit the use of larger tanks. Volvo also presents that it has implemented controls to assure that there is ''more than a 'reasonable likelihood' that the recommended DEF refill intervals will be complied with in-use. Volvo asserts that it has equipped its SCR-based systems with visible warning systems and driver inducements such that vehicle performance will deteriorate to an unacceptable point, in order to compel vehicle operators to refill the DEF tank. Volvo initially developed these strategies in consultation with EPA staff in order to ensure its engines met EPA certification requirements, and has since improved its strategies for current and future model year engines. In its request, Volvo further describes the specific steps it has taken to design its SCR systems to protect against operation of its vehicles without DEF and to prevent SCR system tampering. In addition, Volvo seeks the flexibility to utilize a 1:1 ratio in light of its 40% power reduction (see further clarification below in the SCR Engine Manufacturers request submitted after the Volvo request—EPA assumes this is the flexibility that Volvo is seeking).

3. SCR Engine Manufacturers Request

EPA has also received requests for scheduled maintenance intervals for 2012 and later model years from a group of SCR engine manufacturers (collectively the ''SCR Engine Manufacturers'' [16]) that specifically ask for EPA to approve the use of a 1:1 DEF to fuel ratio for vehicles with a DEF level indicator, in addition to vocational vehicles. The SCR Engine Manufacturers state that such approval is necessary and appropriate to reflect current and anticipated changes in vehicle designs, significant changes in inducement strategies, and the increased availability of DEF since EPA's last approval in 2009.

The SCR Engine Manufacturers note that much of the information required in a (b)(7) petition was confirmed by EPA in its 2009 notice and thus needs no further elaboration. EPA has already concluded that replenishment of DEF is ''technologically necessary'' critical emission-related maintenance, and that the 1:1, 2:1, and 3:1 ratios were ''maximum feasible'' maintenance intervals based on information available in 2009. There has been no change in the need for DEF replenishment or designation of the category of maintenance since 2009. The SCR Engine Manufacturers new petition for a 1:1 DEF interval reflects what is believed to be the ''maximum feasible interval'' based on reasonable tank sizes, given the latest information regarding SCR systems and DEF availability.

Included in the SCR Engine Manufacturers' petition is their position regarding the threshold criteria that EPA should follow for setting a ''technologically necessary maintenance interval.'' They claim that the general maintenance regulations, including the introductory paragraph of (b)(2) which helps frame the established intervals in (b)(3) and (b)(4), provides guidance on what ''technologically necessary'' means when it states that any emission-related maintenance ''must be technologically necessary to assure in-use compliance with the emission standards.'' Thus EPA must first determine whether an interval shorter than the regulatory default is necessary in order to assure in-use compliance. They note that in the 2009 notice EPA specifically addressed the unique nature of liquid DEF replenishment and the need to strike a reasonable balance between conflicting design goals.

Thus, the SCR Engine Manufacturers maintain that the words ''technologically necessary'' are used in two contexts. First, as noted above, (b)(2) requires all maintenance that meets the definition of ''emission-related maintenance'' ''must be technologically necessary to assure in-use compliance with the emission standards.'' Consistent with this provision is (b)(7)(ii) which requires that any alternative interval set by EPA be ''*a* technologically necessary maintenance interval'' (emphasis added). Thus the term ''technologically necessary'' merely describes the

Technologies S.p.A., Ford Motor Company, Hino Motors, Ltd., Isuzu Manufacturing Services of America, Inc., Kohler Company, Komatsu Ltd., Kubota Engine America Corporation, Navistar, Inc., Onan—Cummins Power Generation, PACCAR Inc., Scania CV AB, Tognum America, Inc., Volkswagen of America, Inc., Volvo Powertrain Corporation, Wärtsilä North America, Inc., Yamaha Motor Corporation, and Yanmar America Corporation.

[14] EMA cites from EPA's 2009 FR Notice: ''EPA believes that in light of the existing tight space constraints and the overall desire to maximize cargo-carrying capacity, minimize emissions and meet consumer operation demands, and the built-in DEF tank size buffer to insure DEF refills, that the DEF tank sizes associated with the 2:1 refill and 3:1 intervals are technologically necessary. EPA believes that requiring tank sizes above these ratios will cause increases in space constraints and weight that would not be appropriate for these [HDOH] vehicles. * * * After reviewing this data and information, EPA believes that longer refill intervals than those noted above would require larger and heavier DEF tanks. And the design and engineering work performed by manufacturers thus far indicate that the recommended DEF refill intervals noted above approximate the maximum feasible maintenance interval associated with reasonable DEF tank sizes. The maintenance intervals recommended ensure that the functions and operational efficiency of such vehicles are not overly compromised. Based on this information we believe the intervals noted above are warranted.'' *See* 74 FR at 57674.

[15] EMA expressly states that one of its members—Navistar, Inc.—does not support EMA's request.

[16] This group includes Chrysler Group, LLC, Cummins Inc., Daimler Trucks North America LLC, Detroit Diesel Corporation, Ford Motor Company, Mack Trucks Inc., PACCAR Inc., UD Trucks Corporation, and Volvo Group North America.

category of maintenance that is allowable but not what *the* specific interval must be. Subsequently, the SCR Engine Manufacturers note that once EPA makes this threshold determination (as required in (b)(7)) then the Agency, with a level of discretion, examines the information submitted by the petitioner. Such information includes the petitioner's position on what is the ''maximum feasible maintenance'' including any supporting data or other substantiation for the interval suggested. Rather than looking at the ''maximum level'' that is technologically feasible, the term ''feasible'' requires EPA to look at the overall practicality and reasonableness of a particular proposed interval. The maximum feasible interval is used as a point of reference for EPA to evaluate the reasonableness of the manufacturers' recommended interval. According to the SCR Engine Manufacturers, ''The maximum possible interval for DEF replenishment is established in each case by the total load capacity of the vehicle in question, the space available for a given DEF tank size, the fuel efficiency and greenhouse gas impact of various DEF dosing rates, the desired operating range of the vehicle between fuel and DEF refills, and the impact of extra weight on vehicle performance, safety, and compliance with U.S. Department of Transportation regulatory requirements. DEF tank size must also be balanced against the need to carry cargo, or to enable the vehicle to meet the purpose for which it was built, to determine what is feasible in the most economical way possible while achieving compliance.''

The SCR Engine Manufacturers suggest that as EPA performs its case-by-case analysis, the likelihood of the maintenance being performed in-use is the most important factor in establishing the precise maintenance interval. EPA explained that ''minimum service intervals are established in part to ensure that the control of emissions is not compromised by a manufacturer's overly frequent scheduling of emission-related maintenance.'' [17] They also state that EPA explained in its 2009 notice that while the likelihood of maintenance being performed in-use was a specific criteria under (b)(6), it was also a factor that was ''important to note'' with regard to EPA's (b)(7) findings. Further, EPA then concluded that it was reasonable to base the DEF refilling event on diesel refueling intervals due to DEF infrastructure developed at diesel refueling stations.

EPA has also received information from the SCR Engine Manufacturers indicating that EPA should set the minimum required DEF refill interval at an interval equal to the vehicle's fuel capacity (i.e., a 1:1 ratio) for all heavy duty engines.[18] They claim that this shorter maintenance interval is ''necessary and appropriate to reflect current and anticipated changes in vehicle designs, significant changes in inducement strategies, and the increased availability of DEF.'' They note that certification practices of the EPA regarding inducement practices for SCR-equipped engines make it ''essentially impossible for an SCR vehicle to operate without regular DEF replenishment.'' They state that the severity of inducements related to DEF levels (e.g. severe reduction in engine power and/or vehicle speed) is ''extraordinary and must be taken into account'' when EPA is determining appropriate maintenance intervals. They state that ''in light of these severe inducements, it is reasonable to expect that a driver with a 1:1 tank ratio will operate under a firm discipline that the DEF tank must be refilled every time the fuel tanks are filled, as opposed to a driver with a 2:1 or greater tank ratio who may become accustomed to filling the DEF tank only when necessary, and is therefore more likely to rely on gauge levels, warnings, and inducements to trigger refills.''

The SCR Engine Manufacturers also state that EPA's promulgation of new standards regulating greenhouse gases increase the size and weight restraints associated with DEF tank size.

> EPA has announced new [greenhouse gas] standards for HDOH trucks, and manufacturers have moved to voluntarily increase the fuel efficiency of their vehicles in advance of the effective dates of those regulations. Within these regulations, EPA recognizes the impact of weight savings on fuel efficiency and GHG emissions. In addition, manufacturers have developed innovative new DEF dosing strategies to reduce CO2 emissions. These new strategies may involve increasing the DEF dosing rate. Increasing the DEF dosing rate also makes it more and more difficult to satisfy a 2:1 tank size ratio without increasing the size of the DEF tank above the size EPA previously considered the maximum reasonable size. For this reason, if the application of the 1:1 tank ratio is not expanded, EPA will effectively be mandating larger DEF tanks, with their accompanying weight increase, in order to accommodate technology advancements developed to reduce CO2 emissions—tanks that are larger than the tanks EPA determined to be the maximum reasonably required in 2009. In addition, this could inadvertently cause manufacturers to restrict application of the most fuel efficient engines to vehicles that have reduced range between fuel and DEF refills, such that they will be unattractive to the line-haul fleets that consume the most fuel.

The commenters elaborated that:

> To meet the next round of GHG reduction requirements, some manufacturers expect to increase DEF dosing by as much as 100% over current levels. These increased levels of dosing will require a corresponding increase in DEF tank capacity and size to meet the existing 2:1 tank ratio requirements. For example, increasing DEF dosing by 40% on average would require an increase in DEF tank size of approximately 40% (depending on how much extra capacity was included in the tanks used in previous model years). The shape, size and location of DEF tanks on a truck frame are constrained by a number of factors including: the need to place the tank below the filler-neck; the need for clearance from other components such as fuel tanks, battery boxes, air tanks, diesel particulate filters, and the drive axle and wheels; the need for gravity feed; body installation requirements; clear-back-of-cab requirements; weight distribution requirements; bridge formula and related axle placement issues; and fuel capacity/driving range demands.

They state that another consequence of the greenhouse gas regulations is more attention to improved aerodynamics and weight reduction, which are harmed by the need for a 2:1 DEF tank size requirement. They claim that EPA should allow manufacturers to use all available options to increase fuel economy and meet greenhouse gas standards. They state the possible harm of allowing shorter maintenance intervals is minimal, given the severe negative inducements associated with failure to replenish the DEF tank.

4. Navistar's Opposition to Renewed Requests

EPA has received information from Navistar expressing its opposition to any extension of EPA's previously approved DEF refill intervals. Navistar maintains that the touchstone of allowable maintenance is whether it is reasonably likely that the maintenance will be performed. To this point, it states that EPA's own certification guidance ensures that maintenance will not occur, or at least not for lengthy periods of time. It also states that EPA's inducements to cause drivers to replenish DEF do not work and, and by definition, ensure that maintenance will not occur.[19] Separately, Navistar

[17] EPA made this statement in its 2009 Notice, *see* 74 FR at 57673.

[18] Letters dated August 18, 2011 and September 27, 2011 to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division from R. Latane Montague, Hogan Lovells.

[19] Navistar throughout its comments returns to its theme that EPA's certification scheme allows DEF

contends that the previously approved intervals are not ''technologically necessary'' under EPA's regulations. The purpose of EPA's maintenance regulations is to reduce the amount of driver attention emissions systems require in order to ensure that certified engines comply with emission standards on the road. Navistar claims that the Clean Air Act (CAA) and EPA's regulations require that SCR engine manufacturers make efforts to improve the durability of their driver-dependent emission control systems after MY 2009. Navistar points to EPA's statement from the 2009 approval (''expectation that SCR-related technologies and the urea infrastructure will continue to develop and mature.''), as evidence that EPA must require continuous improvement.[20] Navistar states that ''other SCR technology is now available that offers exponentially longer maintenance ranges, weighs less and conserves fuel more.'' Navistar maintains that EPA's approved maintenance for liquid, urea-based SCR is not about ''technological necessity''. SCR engine manufacturers can easily quadruple the refill interval with little or no effort. They also suggest that EPA cannot legally accept SCR engine manufacturers' lack of effort and extend the same illegal DEF-replacement maintenance intervals for future model years. ''Because other SCR technology is proven to be available with a maintenance interval in the range of 35,000 to 45,000 miles, EPA's own allowable maintenance regulations require that liquid, urea-based SCR meet that same benchmark.''

Navistar also chooses to contrast liquid, urea-based SCR systems with other emission control technologies to suggest that the maintenance interval tied with DEF refills is unnecessarily short They note EPA's approval of new scheduled maintenance for exhaust recirculation valves at 67,500 miles.[21] Navistar states that EPA's basis for defining ''technologically necessary'' has always been ''the longest interval that any manufacturer recommend(s).''[22] Lastly, Navistar notes that EPA is well aware that they have developed for production and introduced other SCR technology (i.e. EGNR) that provides a maintenance interval in the range of 35,000 to upwards of 45,000 miles.

refills to be deferred for lengthy periods of time. As such, Navistar maintains that EPA has illegally amended its allowable maintenance regulations to eliminate the requirement that maintenance be shown as likely to occur. Similarly, Navistar points to EPA's 2001 rulemaking and maintains that EPA ''concluded its maintenance inducements do not create a reasonable likelihood that the maintenance will be performed. (See 2011 Rule at 5053 (finding no ''adequate safeguards in place to ensure the [DEF] is used throughout the life of the vehicle.'')

[20] Navistar maintains that SCR engine makers could have substantially increased the 2009–2011 DEF replacement intervals by doubling the size of the DEF tank and decreasing urea consumption by half.

[21] 73 FR 79089 (December 24, 2008).

[22] 45 FR 4136, 4141 (January 21, 1980).

[23] 74 FR 57671 (November 9, 2009).

IV. Discussion

As set forth above, EPA in its 2007 guidance states that SCR system maintenance meets the regulatory definition of critical emission-related maintenance. EPA has further clarified that allowable maintenance requirements apply to SCR systems, including SCR catalysts, reducing agent, reducing agent storage tanks, dosing valves, and all lines and hoses. Additionally, because manufacturers indicated that packaging constraints would prevent them from being able to equip their vehicles with reducing agent storage tanks of sufficient size to allow reducing agent replenishment to comply with required maintenance intervals of 100,000 or 150,000 miles, EPA clarified that manufacturers would likely need to request a change to the scheduled maintenance interval pursuant to the (b)(7) provision.

Also set forth above, manufacturers have in fact requested such changes for more frequent scheduled maintenance to accommodate DEF refilling events for previous, current, and future model years. When EPA reviewed those manufacturer requests in 2009, it determined that maintenance associated with refill of DEF tanks was new scheduled maintenance and that the manufacturer-requested maintenance request and scheduled maintenance intervals were appropriate and announced that determination in the **Federal Register**.[23] The broad-level considerations EPA evaluated when considering the maintenance interval requests were the space and weight constraints presented by incorporating a DEF tank into vehicle design, as well as the impact a DEF tank's inclusion could have on engine performance. In our 2009 **Federal Register** notice, we concluded that the requested intervals were appropriate because we determined that manufacturer-recommended DEF refill intervals approximated the maximum feasible maintenance intervals associated with reasonable DEF tank sizes. We also concluded that the maintenance intervals recommended ensure that the functions and operational efficiency of such vehicles are not overly compromised.

A. Light-Duty Requests

As EPA explained in its 2009 notice, automobile manufacturers have stated it takes approximately an 8 gallon DEF tank to ensure that DEF will last for the length of a typical oil change interval. Assuming an oil change interval of 10,000 miles, a DEF tank size of approximately 80 gallons would be required to meet a 100,000 mile DEF refill maintenance interval. Even a 16–20 gallon DEF tank (to meet a 2 oil change interval) would interfere with the space that is necessary for typical light-duty vehicle design and transportation needs of the consumer. Interior cabin volume and cargo space are highly valued attributes in light-duty vehicles and trucks. Manufacturers have historically strived to optimize these attributes, even to the point of switching a vehicle from rear-wheel drive to front-wheel drive to gain the extra interior cabin space taken up by where the drive shaft tunnel existed, or switching the size of the spare tire from a conventional sized tire to a small temporary tire to gain additional trunk space. Thus any significant interior, cargo or trunk space used to store a DEF tank would be unacceptable to customers. There are also packaging concerns with placing a large DEF tank in the engine compartment or in the vehicles undercarriage. Most vehicle undercarriages are already crowded with the engine, exhaust system, including catalytic converters and mufflers, fuel tank, etc. limiting any available space for a DEF tank.

In addition to the inherently space constrained areas on the vehicle to place both fuel tanks and DEF tanks (an additional 8 gallon tank represents a very significant demand for space) the addition of the weight associated with the DEF represents significant concerns (*e.g.* performance and efficient operation) on the operation of the vehicle. For example, assuming a density of 9 lb/gallon, an 8 gallon DEF tank represents an additional 72 lbs on a vehicle already looking to optimize performance. Adding additional DEF tank size to even accommodate a two-oil change interval is not feasible or practical given these weight constraints. A requirement for a larger DEF tank may also have an adverse effect on the ability of a manufacturer to meet greenhouse gas emission standards and fuel economy standards.

Presently, no manufacturer has presented any indication that things have changed in any material fashion that would allow for the installation of

larger DEF tanks and/or less frequent DEF refilling intervals on light duty vehicles and trucks. More importantly, EPA is aware of no technological advances in this area and believes that none are likely to occur in the near future. The space and weight constraints presented by inclusion of a DEF tank into vehicle design are inherent. Forcing manufacturers to install larger DEF tanks would not only be impractical for manufacturers, it would also present utility constraints for consumers, drivers, and operators. Therefore, alternative maintenance intervals remain technologically necessary for refilling DEF tanks used on SCR systems.

EPA notes that the DEF refill maintenance interval being equivalent to and occurring with the oil change interval is a fairly long interval (e.g. 7,500 to 12,500 miles) for light-duty vehicles and trucks and is not likely to result in overly frequent maintenance under typical vehicle driving. EPA also believes that an adequate DEF supply will be available to perform the DEF refills at the stated intervals. EPA believes it important to also consider when, where and how often vehicle owners or operators are most likely to perform the DEF refill maintenance. For light-duty vehicles and light-duty trucks, EPA believes the requested DEF refill interval's association with the oil change interval is appropriate given the likelihood of DEF availability at service stations and the likelihood that DEF refill would occur during such service.

Recognizing that alternative maintenance intervals for DEF refilling remain technologically necessary due to space and weight constraints, EPA believes that the above-described alternative maintenance intervals requested by light-duty vehicle manufacturers are appropriate.

B. Heavy-Duty Requests

EPA continues to believe it is reasonable to base the DEF refilling event on diesel refueling intervals given that it is likely that the DEF refill maintenance would be undertaken at the time of fuel refill due to DEF infrastructure developed at diesel refueling stations. EPA agrees with manufacturers that the DEF refilling intervals requested by EMA, as a threshold matter, are ''technologically necessary.'' EPA knows of no SCR technology that is currently available that is yet capable of attaining higher mileage without a DEF refill. Although Navistar maintains that EPA is aware of its ''EGNR'' technology that it has ''developed for production and introduced'' that provides a maintenance interval in the range of 35,000 to upwards of 45,000 miles, Navistar presents no further evidence regarding this technology. Navistar has presented no evidence that such technology is currently available in the marketplace and can meet all requirements of the Clean Air Act and the regulations promulgated thereunder. EPA knows of no application for certification of engines using such technology; nor have any engines using such technology on heavy-duty engines been introduced within the United States. In any case, such technology would be different technology than the DEF-based SCR technology being used by current SCR manufacturers. If engine families using such EGNR technology become established in the marketplace and can meet all of the requirements in EPA's regulations, then it might be appropriate to revisit this issue, although the fact that such technology is substantially different from DEF-based SCR would be relevant for determining whether the establishment of this technology is relevant to the establishment of maintenance intervals for DEF-based SCR.

For vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar typically centrally-fueled applications, EPA believes the DEF tank refill interval should equal the range (in miles or hours) of the vehicle operation that is no less that the vehicle's fuel capacity (*i.e.,* a 1:1 ratio). For all other vehicles, EPA believes the DEF tank refill interval must provide a range of vehicle operation that is no less than twice the range of vehicle's fuel capacity (*i.e.,* a 2:1 ratio).[24] As EPA has noted previously, assuming that 25,000 gallons of diesel fuel were consumed to reach a 150,000 mile interval (the interval applicable to catalyst maintenance for heavy-duty engines), and assuming a 3% DEF consumption rate, 750 gallons of DEF weighing approximately 6,750 pounds would be required to meet a 150,000 mile maintenance interval for DEF refill. A line-haul truck is allowed a maximum gross vehicle weight of 85,000 pounds of which approximately 45,000 pounds is for cargo carrying. A DEF tank of this size would reduce the cargo-carrying capacity by 15%. Another example from the line-haul industry suggests that a DEF tank size of over 900 gallons would be needed to reach the 150,000 mile interval for a common highway vehicle with a diesel fuel capacity of 200 gallons and achieving 6.5 miles per gallon fuel efficiency. Similarly, a medium heavy-duty engine would require 375 gallons of DEF weighing 3,275 lbs to meet a 150,000 mile interval. EPA believes that such tank sizes are clearly not reasonably feasible in light of the weight and space demands and constraints on heavy-duty trucks and the consumer demand for as much cargo-carrying capacity as possible.[25]

The Agency also believes that intervals that are not as long as 150,000 miles but are longer than 2:1 would require DEF tanks that are too large or too heavy to be feasibly incorporated into vehicles. Available data show that heavy-duty engines equipped with SCR-based systems will consume DEF at a rate that is approximately 2%-4% of the rate of diesel fuel consumption. Because of inherent space and weight constraints in the configuration and efficient operation of heavy-duty vehicles, there are size limits on the DEF tanks. Currently, there are truck weight limits that manufacturers must address when making adding or modifying truck designs. EPA expects and believes that manufacturers are taking significant and appropriate steps in order to install reasonably sized DEF tanks to achieve the DEF refills intervals noted. For example, manufacturers are taking such steps as reducing the number of batteries on vehicles despite customer demands or designing space saver configurations, in some instances extending an already very limited frame rail distance to incorporate the DEF tanks and SCR systems, moving compressed air tanks inside the frame rails, redesigning fuel tank configurations at significant costs, and otherwise working with significant size and weight constraints to incorporate DEF tanks. EPA was provided with examples of the consequences of requiring heavy-duty vehicles to accommodate a DEF refill interval of 5:1, and the information provided to the Agency strongly suggested that great compromises would be required in cost, weight and utility of vehicles. Increased

[24] As SCR-equipped vehicles uniformly have a constantly viewable DEF level indicator, EPA is not including a DEF tank refill interval equal to no less than three times the range of the vehicle's fuel capacity (*i.e.,* a 3:1 ratio) for vehicles without such an indicator.

[25] Navistar states, at page 5 of its comments, that ''[d]eviation from 'minimum' maintenance is rare and intended * * * to be temporary. As noted above, EPA has found that DEF refill is a new type of maintenance and is not fairly considered as part of the maintenance of the catalyst covered under (b)(4). In any case, it is clearly of a different type than normal physical maintenance of an emission-related part and EPA must make its determination of maintenance interval based on the particular maintenance being applied. Even Navistar's comments do not suggest that 150,000 miles would be an appropriate maintenance interval for DEF refill.

tank sizes and weights on the magnitude of 150 to 325 lbs. would be required and in some cases diesel fuel volumes would need to be reduced. The extra weight associated with the DEF required to meet the 2:1 refill intervals represents a significant challenge to manufacturers seeking to meet both weight and size requirements for their vehicle designs. In addition, requiring a longer DEF refill interval may result in increased greenhouse gases and decreased fuel economy. EPA believes that in light of the existing tight space constraints and the overall desire to maximize cargo-carrying capacity to minimize emissions and meet consumer operational demands, and the built-in DEF tank size buffer to ensure DEF refills, that the proposed DEF tank sizes are technologically necessary and are also reasonable and appropriate. EPA believes that requiring tank sizes above these ratios will cause increases in space constraints and weight that would not be appropriate for these vehicles. Similarly, EMA notes that under its request, manufacturers would employ the 1:1 refilling ratio for only a small number of vocational applications and those vehicle applications have very limited vehicle space available to house surplus DEF. Such applications (e.g., a garbage truck, concrete mixer, beverage truck, or airport refueler) will also be refueled daily at central locations. At approximately 0.134 ft^3 per gallon, any extra DEF would displace significant space available to vehicle components and subsystems on both the vocational trucks at the 1:1 refill interval as well as the 2:1 vehicles.

In its comments, Navistar suggests that a longer DEF refill maintenance interval in the range of 35,000 to 45,000 miles should be approved. As noted above, one of Navistar's justifications for this longer interval is the claim that other technology is available that would need a maintenance interval no shorter than this. However, as discussed, EPA has no evidence that such technology is actually available at this time, nor does EPA believe that the availability of this other technology would necessarily impact the maintenance interval needed for DEF-based SCR.

Navistar also argues that engine manufacturers using SCR should have made efforts to increase DEF-refill intervals since 2009 and that it is ''certainly feasible'' for SCR systems to meet such a range. Although Navistar maintains that SCR engine makers can easily quadruple the refill interval with little or no effort, Navistar suggests one way to reach this interval is to double DEF tank size, and Navistar makes no effort to present evidence depicting where such enlarged DEF tanks can reasonably be located or the effects on such tanks on operational efficiency. In addition, in determining the minimum maintenance interval for DEF, Navistar suggests that manufacturers can double maintenance intervals by lowering engine-out emissions, which would reduce the DEF dosing frequency and in turn extend the refill interval for a fixed DEF tank size. The Agency reviewed the potential for engine manufacturers to lower engine-out NOx through in-cylinder control techniques such as injection timing retard and exhaust gas recirculation (EGR). It is clear that lowering engine-out NOx will directly lower the quantity of DEF that is needed to meet the NOx standard and hence conceptually might extend the DEF refill interval. However, as documented in the EPA rulemaking that set a Nonconformance Penalty (NCP) for the 2004 NOx standards, for the relevant range of NOx control (around 2 g/bhp-hr NOx engine out) and these specific in-cylinder NOx control technologies, each one gram of NOx reduction is expected to result in a 5 percent increase in fuel consumption.[26] It can also be estimated that the DEF consumption rate is approximately one percent of fuel consumption per one gram of NOx reduction. Since the increase in fuel consumption to reduce NOx by one gram is approximately five times higher than the increase in DEF consumption to treat that same one gram of NOx, it is clear that reducing engine-out NOx in order to extend the DEF refill interval would require an increase in the fuel tank size five times that of the volume savings in the DEF tank size in order to keep the same refueling interval. In other words, reducing engine-out NOx in order to extend the DEF refill interval while keeping the same diesel refueling interval would cause the fuel tank to grow larger necessitating a reduction in the DEF tank volume at a ratio of 5:1. Since that increased fuel tank size would then necessitate a smaller DEF tank, the resulting service interval would be shortened not lengthened.

It could be argued that there's no need to increase fuel tank size in response to higher fuel consumption rates because operators can simply refuel at greater frequencies. To this point, it is important to note that the effective operating range of a vehicle on a single tank of fuel is a key design parameter that determines the mission capability of a vehicle. For example, refuse trucks are designed with appropriate fuel capacity to operate over residential and commercial customer routes and have enough reserve driving range to then allow delivery of payload to a landfill often in remote locations. If a manufacturer maintained fuel tank size and increased the frequency at which the trucks must refuel, these trucks may not be able to accomplish their intended mission without making additional stops for fuel. Fueling stations may not be directly located along the remote route to some landfills, necessitating unplanned trip deviations. At the very least, these trucks would be impaired in the ability to accomplish their mission. Similarly, line-haul trucks are designed with necessary fuel capacity to deliver freight over significant interstate distances while minimizing the need for refueling stops. Increasing the frequency at which the trucks must refuel compromises the ability to accomplish their mission. Increasing the frequency of refueling stops poses a serious negative consequence to the end user of these trucks given their use in commercial applications where the time to accomplish a mission is business critical. EPA does not believe its allowable maintenance provisions are intended to drive this type of impact.

Navistar also suggests that SCR engine makers are legally required to make efforts to improve the time between maintenance for their SCR systems. However, the regulations do not require this, and EPA must review the technological necessity of maintenance intervals based on the existing factual circumstances. Current circumstances do not indicate that a larger maintenance interval is appropriate. While EPA's statement made in the 2009 notice indicates that EPA will continue to monitor the evolution of SCR systems along with urea infrastructure to determine whether the frequency of DEF refills can be adjusted, this does not imply that adjustment is necessary or appropriate, or in which direction such adjustment would go. In addition, regarding Navistar's reference to a 1980 EPA rulemaking regarding EPA's consideration of the longest interval that any manufacturer recommends, while EPA does look at such information, that interval does not necessarily become the interval determined under (b)(7). In some instances EPA may set an even more frequent interval and in others the Agency may set a less frequent interval; EPA's determination of what is a feasible interval for an engine family or an industry is based on a number of

[26] ''Final Technical Support Document: Nonconformance Penalties for 2004 Highway Heavy Duty Diesel Engines'', EPA420–R–02–021, August 2002.

factors including manufacturer(s) recommended intervals, any physical or technological constraints, burdens that may be placed on the operator and what are reasonable expectations of durability from an operator's perspective, among other factors.

After reviewing this data and information, EPA believes that longer refill intervals than those noted above would require larger and heavier DEF tanks, and the design and engineering work performed by manufacturers thus far indicate that the recommended DEF refill intervals noted above approximates the maximum feasible maintenance intervals associated with reasonable DEF tank sizes, given the substantial negative consequences of longer DEF refill interval requirements. The maintenance intervals recommended ensure that the functions and operational efficiency of such vehicles are not overly compromised. Based on this information we believe the intervals noted above are warranted.

EPA is not approving a 1:1 DEF maintenance interval across the heavy-duty engine class at this time. EPA notes that manufacturers have been meeting a 2:1 ratio for DEF tank size for the past two years and the commenters have not yet provided sufficient evidence that this ratio will be infeasible in the future. Moreover, the information EPA has received to date has not shown that any change in the maintenance interval is necessary or appropriate throughout the heavy-duty engine category, rather than for particular applications, or that a refill interval as low as 1:1, rather than 1.8:1 or 1.5:1, is necessary or appropriate. EPA recognizes that the implementation of the future standards for greenhouse gases, beginning as early as the 2013 model year, may have some implications for this issue, but the SCR Engine Manufacturers have not shown that these standards, which are phased in and are not applicable in the 2012 model year, will cause the 2:1 refill interval to be infeasible across the industry, and certainly not in the 2012 model year. While EPA agrees that the warnings and inducements in place for failure to replenish DEF will restrict the ability of operators to run without DEF, and have made operation without DEF virtually unheard of, a DEF tank ratio of 1:1 will increase the likelihood that operators will need to make more frequent stops to replenish DEF, and possibly may need to stop solely to replenish DEF, which may place a greater burden on the operator in terms of the frequency of DEF refills.

EPA also notes that the regulations allow any manufacturer to petition EPA under the ''paragraph (b)(7) process'' for a shorter maintenance interval for a particular engine family or application than that approved for the industry if the manufacturer can show that a shorter interval is the maximum feasible interval necessary for the particular engine or vehicle configuration being certified.

Navistar and the SCR Engine Manufacturers suggest, respectively, that the ''likelihood of the maintenance being performed in-use'' is the touchstone of allowable maintenance, or is the most important factor in establishing the precise maintenance interval. At the outset, EPA believes it is important to note the context of the term ''reasonable likelihood of being performed in-use'' within paragraph (b)(6)(ii). For critical emission-related maintenance (including critical emission-related maintenance under paragraph (b)(6)(i), as well as such maintenance as determined by EPA under (b)(7)), manufacturers are required to show such likelihood prior to performance of such maintenance on durability test vehicles. Manufacturers can satisfy this requirement by meeting one of the specified conditions in paragraphs (b)(6)(ii) (A) through (F). Paragraph (b)(7) does not specify any additional showing required of the manufacturer should an alternative maintenance interval for emission-related critical maintenance be approved. Thus, if a manufacturer can show compliance with one of the specified conditions in (b)(6)(ii), the manufacturer has met the regulatory requirement to show a ''reasonable likelihood of [the maintenance] being performed in-use'' as required under paragraph (b)(7). As noted in the 2009 notice, SCR engine manufacturers (or vehicle manufacturers) are using a clearly displayed visible signal system approved by EPA, meeting the requirements of (b)(6)(ii)(C). In addition, SCR engine manufacturers are going beyond the minimum requirements of (b)(6)(ii) and are designing, and are expected by EPA to design (under the adjustable parameter regulatory provisions) their systems to include inducements that will adequately trigger the operators to refill the DEF tanks by reducing vehicle performance to a point unacceptable for typical driving, which would meet the requirements of (b)(6)(ii)(A).[27] Section (b)(7) does not include an affirmative requirement on the petitioner to demonstrate nor on EPA to find a likelihood of maintenance being performed beyond that which is clearly and specifically prescribe at (b)(6). Indeed, although EPA ''noted'' the likelihood of performance in its 2009 notice, EPA did so in order to provide the regulated community with a complete picture of how the allowable maintenance provisions should be read together and how they complement each other. In addition, EPA notes that the determination of what is maximally feasible under (b)(7) does not require, or in fact include, a consideration of the inducements (as described above). EPA nevertheless believes that such inducements clearly and sufficiently provide the necessary demonstration of likelihood of maintenance.

Conversely, with respect to the arguments from the SCR Engine Manufacturers, the fact that maintenance is likely to occur does not affect the determination of what is the appropriate ''technologically necessary maintenance interval.'' While the likelihood of maintenance and the technological necessity of regular maintenance are both required elements under (b)(7), and the desire to increase the likelihood of maintenance may inform the particular form of the maintenance interval (i.e. having DEF refill maintenance be at the same time as oil change), the two requirements are separate and distinct. The ''technologically necessary maintenance interval'' requirement is motivated by a desire to minimize the amount of emission-related maintenance, which is distinct from the need to make sure that such maintenance is likely to occur. As noted, the SCR Engine Manufacturers have not shown that the 1:1 maintenance interval is ''technologically necessary.'' Therefore, while EPA agrees that the DEF refill maintenance is likely to occur in use, the 1:1 interval does not meet the requirements of (b)(7).

V. Approval of New Scheduled Maintenance for SCR Systems

A. Light-Duty Approval

For the reasons set forth above, EPA finds it appropriate to approve new scheduled maintenance intervals for DEF refill equal to the scheduled oil change interval for all light-duty vehicles and light-duty trucks, medium duty vehicles and other chassis certified vehicles up to 14,000 pounds for 2011 and later model years.

B. Heavy-Duty Approval

For the reasons set forth above, EPA again approves new scheduled maintenance intervals for DEF based on ratios to a given vehicle's fuel capacity for engine certified heavy-duty engines and vehicles for 2012 and later model years. Vocational heavy-duty vehicles

[27] *See* EPA's draft guidance at 76 FR 32886 (June 7, 2011).

(*e.g.,* dump trucks, concrete mixers, refuse trucks, and other centrally-fueled vehicles) are permitted a DEF tank maintenance interval no less than the vehicle's fuel capacity (*i.e.,* a 1:1 ratio of DEF refill to fuel refill). For all other heavy-duty vehicles, EPA approves a DEF tank refill interval no less than twice the range of the vehicle's fuel capacity (*i.e.,* a 2:1 ratio).

C. Reasonable Likelihood of Maintenance Being Performed In Use

As stated above, because DEF refills are considered ''critical emission-related maintenance,'' manufacturers must ''show the reasonable likelihood of such maintenance being performed in use.'' 40 CFR 86.094–25(b)(6)(ii) and 86.1834(b)(6)(ii) provide a number of means by which manufacturers may demonstrate such a reasonable likelihood. Among those means of demonstration are visible signal systems to alert drivers and operators that maintenance is needed, or data demonstrating that drivers or operators are induced to perform maintenance. EPA intends to review specific manufacturer certification applications in order to review whether these regulatory requirements are met.

D. Applicability

The Agency, as stated above, has approved alternative maintenance requests to ensure the proper functioning of SCR systems by allowing an appropriately frequent refilling of DEF tanks. We approve these requests for all future model years. EPA expressly reserves its ability to review this approval at any time in the future, should any technological advances be made that would allow for more or less frequent DEF refilling or otherwise call this approval into question.

VI. Procedures for Manufacturer Objections

Any manufacturer may request a hearing on this determination. The request must be in writing and include a statement specifying the manufacturer's objections to this determination, and data in support of such objections. If, after review of the manufacturer's objections and supporting data, we find that the request raises a substantial factual issue, we shall provide the manufacturer with a hearing in accordance with 40 CFR 86.1853–01 with respect to such issue.

Dated: December 23, 2011.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. 2011–33842 Filed 1–4–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–9615–9]

Control of Emissions From New Nonroad Compression-Ignition Engines: Approval of New Scheduled Maintenance for Selective Catalytic Reduction Technologies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has granted manufacturers new emission-related scheduled maintenance and maintenance intervals for the replenishment of the nitrogen-containing reducing agent for selective catalytic reduction (SCR) technologies used with nonroad compression-ignition (NRCI) engines for 2011 and later model years. Replenishment of reducing agent for SCR technologies is considered critical emission-related maintenance.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., (405J), Washington, DC 20460. Telephone: (202) 343–9256. Email address: *Dickinson.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA adopted new emission standards for NRCI engines on June 29, 2004.[1] We expect that many manufacturers will use SCR systems to meet the final Tier IV NO_X reduction requirements for their diesel engines. SCR systems use a nitrogen-containing reducing agent that usually contains urea and is known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas upstream of a catalyst and requires periodic replenishment (maintenance) by refilling the DEF tank.

NRCI engine manufacturers are required to provide written instructions for properly maintaining and using the engine, including the emission control system, to purchasers of new engines. These maintenance instructions, including the hours associated with the maintenance intervals, also apply to the engine during its service accumulation for emission testing purposes.

Maintenance performed on NRCI engines is classified as critical emission-related maintenance if it includes any adjustment, cleaning, repair, or replacement of critical emission-related components. As set forth at 40 CFR 1039.125(a)(1), 1039.125(a)(2), and 1039.125(a)(3), a manufacturer may schedule critical emission-related maintenance on these types of components if certain conditions are met, including a demonstration that the maintenance is reasonably likely to be done at the recommended intervals, and depending upon the size of the engine and the type of emission-related component, an EPA-prescribed minimum hour maintenance interval. For example, a manufacturer of engines below 130 kW may not schedule maintenance more frequently than 3,000 hours for catalytic converters and if the engines are at or above 130 kW then a manufacturer may not schedule the catalytic converter maintenance more frequently than 4,500 hours.

In addition, should a manufacturer desire a new or shorter scheduled maintenance interval (that it wishes to recommend to purchasers and perform during service accumulation on emission-data engines) not found under § 1039.125(a)(2) and 1039.125(a)(3), and instead utilize § 1039.125(a)(5), then the manufacturer must submit a request to EPA for approval. A request for a shorter maintenance interval includes new scheduled maintenance on emission-related components that were not in widespread use with NRCI engines before 2011. Requests from manufacturers for new scheduled maintenance intervals must include: (1) A description of the proposed maintenance step, (2) the recommended maximum feasible interval for this maintenance, (3) the rationale with supporting evidence to support the need for the maintenance at the recommended interval, and (4) a demonstration that the maintenance will be done at the recommended interval on in-use engines.

In considering requests for new scheduled maintenance EPA will evaluate the information provided to EPA and any other available information to establish alternate specifications for maintenance intervals as deemed appropriate.

EPA believes the existing allowable scheduled maintenance hour intervals applicable to catalytic converters are generally applicable to SCR systems which contain a catalyst, but that SCR systems are a new type of technology and that DEF refills are a new type of

[1] 69 FR 38958 (June 29, 2004).

maintenance uniquely associated with SCR systems. Therefore, the 3,000 hour (engines below 130 kW) and 4,500 hour (engines at or above 130 kW) intervals are generally applicable to SCR systems, but are not controlling in determining the appropriate DEF refill interval. As noted, the SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills.

II. Current Requests

EPA has received information from the Engine Manufacturers Association,[2] as well as AGCO, Caterpillar, and IVECO supporting their requests for new recommended scheduled maintenance intervals for their SCR systems.

Several of the requests noted that the DEF is essential for the proper functioning of the SCR system, and thereby constitutes a ''critical'' maintenance component.[3]

The requests primarily seek EPA's approval of a DEF tank that provides a range of operation that is equal to the engine or equipment's fuel capacity—this is known as a 1:1 ratio—for 2011 and later model year nonroad engines.[4] In determining the recommended DEF refill intervals, several of the requestors applied ''good engineering judgment'' as described in the March 27, 2007 SCR certification guidance for on-highway engines.[5] Some noted that since SCR systems may consume DEF at a rate of approximately 2% to 4% of the rate of diesel fuel consumption (consumption rates could be even higher as one requestor noted), it would be technically infeasible to equip a nonroad engine or piece of equipment with a DEF tank large enough to operate for the standard 3,000- or 4,500-hour maintenance interval without DEF refill. For example, considering a representative range of construction and agricultural equipment, to meet the 3,000- to 4,500-hour maintenance requirements:

- A skid steer loader with a 50 kilowatt (kW) engine, that normally carries a maximum of 25 gallons of fuel, would require a DEF capacity of approximately 150 gallons, weighing over 1,400 pounds and requiring more than 20 cubic feet (ft^3) of space.
- A bulldozer with a 150 kW engine, that normally carries a maximum of 110 gallons of fuel, would require a DEF capacity of approximately 900 gallons, weighing over 8,000 pounds and requiring more than 120 ft^3 of space.
- A combine harvester with a 250 kW engine, that normally carries a maximum of 250 gallons of fuel, would require a DEF capacity of approximately 900 gallons, weighing over 8,000 pounds—almost half as much as the combine's grain tank capacity—and requiring more than 120 ft^3 of space.
- A large off-highway mining truck with a 900 kW engine, that normally carries a maximum of 500 gallons of fuel, would require a DEF capacity of approximately 5,500 gallons, weighing over 50,000 pounds and requiring more than 735 ft^3 of space.

Several of the requests suggested that in order to apply good engineering judgment EPA must strike the proper balance between the dictates of operating nonroad equipment (which requires DEF tanks of small enough weight and size so as not to hinder the engine's or equipment's function while also not causing too frequent stops or downtime) and what the requestors suggest is EPA's need to ensure emission compliance in use. The requestors suggest that mobile nonroad engines and equipment are directly analogous to ''vocational'' on-highway vehicles, in that they typically are refueled on a daily basis from a central location and so are well-suited to the refilling of their DEF tanks on the same daily basis.[6]

The requestors also suggest that their recommended DEF refill intervals are the maximum intervals since longer intervals would require larger and heavier tanks, which may jeopardize the engine or equipment's mission or functionality. One of the requestors noted, by way of example, that its average engines used in modern agriculture and construction machines would consume as much as 1,000 to 2,200 gallons of DEF in order to meet the 4,500-hour regulated interval. Such tanks (weighing 9,000/20,000 pounds) would be essentially impossible to install given the limitations in available space and visibility for operators on machines, with impacts on safety, along with massive increases of machine weight which would pose serious problems in operability in agricultural lands along with worsening machine fuel consumption resulting in higher CO_2 emissions. Such constraints include the need to work and pass in very narrow openings in orchards, safety and visibility concerns, and the operability of other components on the equipment (including clearance between the DEF tank on tires). This requestor also asks EPA to consider the shelf-life of DEF at normal ambient temperatures as 18 months, much less than the 3- to 5-year period which roughly corresponds to the interval of 4,500 hours.

A separate request noted the important relationship between DEF and fuel volume, packaging and serviceability concerns, along with tilt capability and weight concerns in support of its recommended 1:1 DEF refill ratio. A 1:1 ratio develops the correct machine operating habit to fill the DEF at each fuel fill interval, and from a vehicle design standpoint many of its applications are taking away fuel tank volume to create space for the DEF tank and provide instances where the DEF tank is nestled in the fuel tank area. In terms of serviceability, the optimal placement of the DEF tank is close to the fuel tank so both can be refueled conveniently at the same time. As the filler neck on the fuel tank is already accessible from ground level, placing the DEF tank nearby ensures that it is also accessible. Providing such accessibility increases the limitations on the design and placement of the DEF tank. Tanks sized for a 1:1 ratio are much more likely to fit within the allowable space on a piece of equipment than a larger tank. Examples were provided by the requestor noting where 2:1 tanks would not fit. This requestor also noted that a 2:1 DEF tank would add 65 to 220 pounds to machines and would negatively affect the ability to

[2] The EMA members participating in nonroad diesel engine activities include: Caterpillar Inc., Cummins Inc., Deere & Company, Daimler Trucks North America LLC, Deutz Corporation, Fiat Powertrain Technologies S.p.A., Hino Motors, Ltd., Isuzu Manufacturing Services of America, Inc., Komatsu Ltd., Kubota Engine America Corporation, MTU Detroit Diesel Corporation, AB Volvo, and Yanmar America Corporation.

[3] 40 CFR 1039.801 defines a critical emission-related component to include, in part, any component whose primary purpose is to reduce emissions.

[4] Several of the requests also seek a 2:1 DEF refill ratio if there is no DEF level indicator. However, because EPA has already made clear that such DEF level indicator is otherwise necessary (see footnote 8) the Agency is not evaluating the 2:1 ratio request at this time. Separately, a couple of the requests seek a DEF tank size that is capable of sustaining a minimum of 120 hours of operation for engines used in part-time and full-time stationary applications when the engine is provided with a very large, and possibly unlimited fuel supply. One of those requests has been withdrawn. The other does not provide sufficient evidence to support why the recommended interval is the appropriate maintenance interval for these particular applications. Thus, the Agency is not taking action to approve the requests at this time, but may act in the future if more detailed information on this issue is provided to EPA.

[5] *See* CISD–07–07, p. 2.

[6] In EPA's November 9, 2009 approval of new scheduled maintenance for SCR-equipped on-highway engines and vehicles, the Agency found that for vocational vehicles the DEF refill interval should equal the range of the vehicle operation that is no less than the vehicle's fuel capacity (i.e. a 1:1 ratio). 74 FR 57671.

carry payload, which is one of the primary functions of the majority of construction machines. Lastly, construction machines must operate in a variety of conditions and operate often on steep slopes. Equipment with 1:1 DEF tanks of the correct design creates a lower risk of losing DEF fluid suction pickup when operating on extreme tilt as compared to larger tanks.

In order to fulfill the obligation to demonstrate that the maintenance will be done at the recommended interval on in-use engines, requestors noted that manufacturers will deploy warnings and inducements should the DEF level become too low. In addition to these initial inducements, should the operator ignore them, then the requestors noted that manufacturers will employ ''severe inducement'' intended to disable the functionality of the engine or equipment.[7]

Furthermore, EPA notes that several current SCR systems include the final inducement of either having the engine shut down or idle only (with no power) when no DEF is present in the DEF tank (or the system is no longer able to dose with DEF), and such SCR systems meet EPA's expectations of what is required for nonroad SCR systems.[8] As an example, one manufacturer noted that ''To provide the necessary assurance that the DEF tank will be refilled, each vehicle will be equipped with a constant viewable DEF level indicator included in the vehicle dashboard display. * * * the operator display system includes a visible warning signal that indicates when the level of DEF in the tank is low and will need refilling. As a final inducement, the system also includes programmed engine derates that limit engine performance once the DEF level drops below certain levels, thereby limiting vehicle performance.'' EMA, in its request, noted that should operators fail to notice audible or visible warning signals indicating low DEF, then the manufacturers may also use a reduction in engine power or equipment utility to provide more dramatic notice that the DEF tank needs refilling. This ''severe inducement'' is intended to disable the functionality of the engine or equipment, and to substantially limit the likelihood that the engine or equipment could perform any useful work, but is not intended to prohibit the engine or equipment's mobility or ability to idle. EMA also notes that it expects EPA to provide guidance on an appropriate final inducement once the SCR system runs out of DEF.

III. Discussion

EPA believes that SCR systems are a new technology and are properly considered a critical emission-related component since their primary purpose is to control emissions. In addition, the replenishment of DEF as part of maintaining the SCR system's functionality is considered to be critical emission-related maintenance under 1039.125(a).

EPA believes it appropriate to evaluate the DEF refill rates by taking into consideration the space and weight constraints typically involved with the range of NRCI engines using SCR systems, including safety and impacts of weight and dosing rates on greenhouse gas emissions and fuel efficiency. EPA believes it must also take into consideration the likelihood that the maintenance of DEF refills will be performed by the owner or operator.[9]

In our 2009 **Federal Register** notice regarding heavy-duty on-highway engines and vehicles using SCR systems, we concluded that the requested intervals were appropriate because we determined that manufacturer-recommended DEF refill intervals approximated the maximum feasible maintenance intervals associated with reasonable DEF tank sizes. We also concluded that the maintenance intervals recommended ensure that the functions and operational efficiency of such vehicles are not overly compromised.[10] EPA knows of no SCR technology for NRCI engines that is yet capable of attaining longer operation (generally beyond one tank full of diesel) without a DEF refill. As noted by the requests, there are significant space and weight constraints associated with increasing the DEF tank size in order to accommodate a 2:1 refill ratio. EPA believes it appropriate to take into consideration the need for locating the DEF tank in close proximity to the fuel tank and the remainder of the SCR system, as well as the increased likelihood that the DEF tank will be refilled if it becomes standard operating practice to refill the DEF tank at the same time as the fuel tank. EPA believes that such nonroad equipment is similar to centrally-fueled heavy-duty on-highway vehicles and that there is a sufficient basis and a reasonable expectation that DEF tank refills will occur on a timely basis.

EPA notes that the regulations allow any manufacturer to petition EPA under the ''paragraph (a)(5) process'' for a new maintenance interval for a particular engine family or application than that approved for the industry if the manufacturer can show that a certain interval is the appropriate maintenance interval for the particular engine configuration being certified.

EPA also notes that all critical emission-related maintenance must have a reasonable likelihood of being done at the recommended intervals on in-use engines. Paragraph 1039.125(a)(1) sets forth several methods by which such demonstration can be made, including data showing that if a lack of maintenance increases emissions, it also unacceptably degrades the engine's performance. In the context of SCR systems and the potential of an empty DEF tank and an inoperable SCR system, EPA notes that equipment under such operating conditions are expected to shut down or idle only. Engine manufacturers employing such final inducements meet the requirements of (a)(1) and furthermore meet the requirement under (a)(5) for DEF refill intervals based on a 1:1 ratio.

For the reasons set forth above, EPA approves a new scheduled maintenance interval for DEF refill that shall be no less than the equipment's fuel capacity (i.e., a 1:1 ratio of DEF refill to fuel refill) for 2011 and later model year nonroad engines.

IV. Procedures for Objections

Anyone may request a hearing on this determination. The request must be in writing and include a description of your objection and any supporting data. The request must be made by February 6, 2012. If, after review of any objection and supporting data, we find that the request raises a substantial factual issue, we will hold a hearing in accordance with 40 CFR Part 1068 Subpart G.

Dated: December 23, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–33840 Filed 1–4–12; 8:45 am]

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[7] EMA suggests that a severe inducement would reduce the engine to 60% of the rated speed and 50% rated torque.

[8] EPA held a public webinar on July 26, 2011. Copies of the presentation used at this webinar can be found at: *www.epa.gov/otaq/cert/documents/nrci-scr-web-conf.2011-07-25.pdf.*

[9] 40 CFR 1039.125(a)(5).

[10] 74 FR 57561 (November 9, 2009).

FEDERAL HOUSING FINANCE AGENCY

[No. 2011–N–14]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of the establishment of new systems of records and removal of existing systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the Federal Housing Finance Agency (FHFA) gives notice of the proposed establishment of three new Privacy Act systems of records and the removal of four existing Privacy Act systems of records.

The three proposed new systems are: ''Emergency Notification System'' (FHFA–14); ''Payroll, Retirement, Time and Attendance, and Leave Records'' (FHFA–15); and ''Personnel Investigative Records'' (FHFA–16). The proposed new systems will replace systems of records issued by FHFA's predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB). Proposed systems (FHFA–14) and (FHFA–15) will replace OFHEO systems ''OFHEO–2 Pay and Leave System'' and ''OFHEO–6 Emergency Contingency Plan and Personnel Locator System,'' and FHFB system ''FHFB–1 Employee Attendance Records.'' Proposed system (FHFA–16) will replace FHFB system ''FHFB–5 Personnel Investigative Records.''

FHFA has previously published a system of records notice (''Financial Management System'' (FHFA–2), 74 FR 31949 (July 6, 2009)); however, in publishing that notice, FHFA did not explicitly state that OFHEO and FHFB system of records notices were being replaced. Notice is hereby given that the systems of records notice ''OFHEO–1 Financial Management System'' and ''FHFB–2 General Travel and Transportation Files'' have been replaced by ''Financial Management System'' (FHFA–2). Upon the effective date of this notice, the replaced OFHEO system, ''OFHEO–1'' published at 63 FR 9007 (February 23, 1998) and ''FHFB–2'' as amended at 71 FR 61053 (October 17, 2006) will be removed.

In addition, upon the effective date of this notice, the replaced FHFB systems, ''FHFB–1'' published at 60 FR 46120 (September 5, 1995), as amended at 62 FR 66865 (December 22, 1997) and 71 FR 61052 (October 17, 2006), and ''FHFB–5'' (originally published as ''FHFB–7 Agency Personnel Investigative Records'' at 60 FR 46120 (September 5, 1995)), as amended at 64 FR 14920 (March 29, 1999), 68 FR 39947 (July 3, 2003), and 71 FR 61052 (October 17, 2006); and the replaced OFHEO systems, ''OFHEO–2'' published at 63 FR 9007 (February 23, 1998), and ''OFHEO–6'' published at 71 FR 6085 (February 6, 2006) will be removed.

DATES: The addition of these new systems of records will become effective February 14, 2012 without further notice unless comments necessitate otherwise. FHFA will publish a new notice if the effective date is delayed in order to review comments or if changes are made based on comments received. To be assured of consideration, comments must be received on or before February 6, 2012.

ADDRESSES: Submit comments *only once,* identified by ''2011–N–14,'' using any one of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel, may be sent by email to *RegComments@fhfa.gov.* Please include ''2011–N–14'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''2011–N–14'' in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/2011–N–14, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552. Please note that all mail sent to the FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/2011–N–14, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552. The package should be logged at the Guard's Desk, First Floor, on business days between 9 a.m. to 5 p.m.

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Stacy Easter, Privacy Act Officer, *privacy@fhfa.gov* or (202) 414–3762, or David A. Lee, Senior Agency Official for Privacy, *privacy@fhfa.gov* or (202) 414–3804 (not toll free numbers), Federal Housing Finance Agency, 1700 G Street NW., Washington DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA seeks public comments on the three proposed new systems of records and will take all comments into consideration. *See* 5 U.S.C. 552a(e)(4) and (11).

Instructions: In addition to referencing ''Comments/2011–N–14,'' please reference the title and number of the system of records your comment addresses.

Posting and Public Availability of Comments: All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Introduction

This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. Congress has recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedure Act. The Director of FHFA has determined that records and information in these three new systems of records are not exempt from the requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (61 FR 6427, 6435 February 20, 1996), FHFA has submitted a report describing the three new systems of records covered by this notice to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on

Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

III. Proposed Systems of Records

The first proposed system is ''Emergency Notification System'' (FHFA–14). The proposed system will contain records related to FHFA employees and contractor personnel who provide emergency contact information, including personal phone numbers, home and email addresses, and names and contact information of emergency points of contact. This proposed system of records will replace the system of records issued by FHFA's predecessor agency OFHEO. The replaced OFHEO system, ''OFHEO–6 Emergency Contingency Plan and Personnel Locator System'' was published at 71 FR 6085 (February 6, 2006).

The second proposed system is ''Payroll, Retirement, Time and Attendance, and Leave Records'' (FHFA–15). The proposed system will contain records of individual's name; home address; telephone numbers; Social Security number; organization code; pay rate; salary; grade; length of service; pay and leave records; source documents for posting time and leave attendance; and deductions for Medicare; Old-Age, Survivors, and Disability Insurance (also known as Social Security); bonds; Federal Employee Group Life Insurance; union dues; taxes; allotments; retirement; charities; Federal Government and commercial health benefits; Flexible Spending Account; Long Term Care Insurance; Thrift Savings Plan contributions; 401k plan contributions; awards; shift schedules; pay differential; tax lien data; wage garnishments; and any other information pertaining to payroll, retirement, time and attendance, and leave. This proposed system of records will replace the systems of records issued by FHFA's predecessor agencies, FHFB and OFHEO. The replaced FHFB system ''FHFB–1 Employee Attendance Records'' was published at 60 FR 46120 (September 5, 1995), as amended at 62 FR 66865 (December 22, 1997), and at 71 FR 61052 (October 17, 2006), and the OFHEO system, ''OFHEO–2 Pay and Leave System,'' was published at 63 FR 9007 (February 23, 1998).

The third proposed system is ''Personnel Investigative Records'' (FHFA–16). The proposed system will contain individual's name; date of birth; current and former home addresses; work histories; education and financial information; Social Security number; information about family members; information about references; types and dates of investigations; investigative reports; dates, levels and types of clearances; and other information pertinent to granting or denying a security clearance or making a suitability determination. This proposed system of records will replace the system of records issued by FHFA's predecessor agency FHFB. The replaced FHFB system, ''FHFB–5 Personnel Investigative Records,'' was originally published at 60 FR 46120 (September 5, 1995—originally published as ''FHFB–7 Agency Personnel Investigative Records''), as amended at 62 FR 66865 (December 22, 1997), 68 FR 39947 (July 3, 2003), and 71 FR 61052 (October 17, 2006).

The three proposed new systems and the routine uses for each are set out in their entirety and described in detail below.

FHFA–14

SYSTEM NAME:

Emergency Notification System.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552; 1625 Eye Street NW., Washington, DC 20006; 1750 Pennsylvania Avenue NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current and former employees, detailees, interns, fellows, volunteers, persons who work at FHFA under the Intergovernmental Personnel Act, and current and former contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system contain the individual's name, division, office, home, work and personal electronic mail addresses, work, home and cellular telephone numbers, Blackberry PIN and telephone numbers, and other emergency contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 12656, Assignment of Emergency Preparedness Responsibilities, dated November 18, 1988.

PURPOSE(S):

The purpose of the system of records is to maintain emergency contact information for employees and contractor personnel. The system provides for high-speed message delivery that reaches employees and contractor personnel in response to threat alerts issued by the Department of Homeland Security, weather related emergencies, or other critical situations that disrupt the operations and accessibility of a worksite. The system also provides for personnel accountability during an emergency, through personnel sign-in and rapid alert and notification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) When (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA 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 FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(2) Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a financial regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) To any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil or criminal litigation, if FHFA has reason to believe that the individual to whom the record is disclosed may

have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

(4) To any individual with whom FHFA contracts to reproduce, by typing, photocopy or other means, any record within this system for use by FHFA and its employees in connection with their official duties or to any individual who is utilized by FHFA to perform clerical or stenographic functions relating to the official business of FHFA.

(5) To members of advisory committees that are created by FHFA or by Congress to render advice and recommendations to FHFA or to Congress, to be used solely in connection with their official, designated functions.

(6) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(7) To the Department of Justice when (a) FHFA, or any component thereof; or (b) any employee of FHFA in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice or FHFA has agreed to represent the employee; or (d) the United States, where FHFA determines that litigation is likely to affect FHFA or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice or FHFA is deemed by FHFA to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(8) To a Member of Congress, to a Congressional staff member or to a Congressional Committee in response to an inquiry from the Member of Congress, the Congressional staff member or Congressional Committee made at the written request of the individual about whom the record is maintained.

(9) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for FHFA.

(10) To appropriate federal agencies and other public authorities for use in records management inspections.

(11) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(12) To the Office of Management and Budget and the General Accountability Office when relevant and necessary to carry out their responsibilities or to perform other functions within their jurisdiction.

(13) To the Office of the Inspector General for investigating allegations of abuse or misconduct, or to perform other functions within the jurisdiction of the Office of the Inspector General.

(14) To any Federal Government authority for the purpose of coordinating and reviewing agency continuity of operations plans or emergency contingency plans developed for responding to Department of Homeland Security threat alerts, weather related emergencies, or other critical situations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in electronic format, paper form, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms, locked file cabinets, or locked safes.

RETRIEVABILITY:

The records are retrieved by email address, the individual's name, assigned file number, or some other personal identifier.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Computerized records are safeguarded through use of access codes and other information technology security measures. Paper records are safeguarded by locked file rooms, locked file cabinets, or locked safes. Access to records is restricted to those who require the records in the performance of official duties related to the purposes for which the system is maintained.

RETENTION AND DISPOSAL:

The records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Deputy Chief Operating Officer, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

Record source is from the individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–15

SYSTEM NAME:

Payroll, Retirement, Time and Attendance, and Leave Records.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATIONS:

(1) Payroll files, retirement case files, time and attendance records and reports, and service history files: Federal Housing Finance Agency (FHFA), 1625 Eye Street NW., Washington, DC 20006;

(2) Notices of personnel action and other pay-related records: Government Employees Services Division, National Finance Center, U.S. Department of Agriculture, Attn: CS–0106, P.O. Box 60000, New Orleans, LA 70160–0001;

(3) Retired official personnel files: National Archives and Records

Administration, National Personnel Records Center (Civilian Personnel Records Center), 1411 Boulder Boulevard, Valmeyer, IL 62295; and

(4) Any alternate work site utilized by employees of FHFA or by individuals assisting such employees. For administrative purposes, duplicate systems may exist within FHFA at the duty station of each employee.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current and former employees, detailees, interns, fellows, volunteers, persons who work at FHFA under the Intergovernmental Personnel Act, and current and former contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system contain the individual's name; home address; telephone numbers; Social Security number; organization code; pay rate; salary; grade; length of service; pay and leave records; source documents for posting time and attendance; and deductions for Medicare; Old-Age, Survivors, and Disability Insurance (also known as Social Security); bonds; Federal Employee Group Life Insurance; union dues; taxes; allotments; retirement; charities; Federal Government and commercial health benefits; Flexible Spending Account; Long Term Care Insurance; Thrift Savings Plan contributions; 401k plan contributions; awards; shift schedules; pay differential; tax lien data; and wage garnishments; and any other information pertaining to payroll, retirement, time and attendance, and leave. The payroll, retirement, and leave records described in this notice form a part of the information contained in the National Finance Center's integrated Personnel and Payroll System (PPS). Personnel records contained in PPS are covered under the government-wide systems of records notice published by the Office of Personnel Management (OPM/GOVT–1 and OPM/GOVT–5).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, the Federal Home Loan Bank Act (12 U.S.C. 1421–1449), and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), both as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

PURPOSE(S):

The purpose of the system of records is for FHFA's operations for payroll, time and attendance, leave, insurance, tax, retirement, qualifications, and benefits; to prepare related reports to other Federal agencies including the Department of Treasury and the Office of Personnel Management; and to locate FHFA employees and determine such matters as their period of service, type of leave, qualifications, benefits, and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) When (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA 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 FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(2) Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a financial regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) To any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil or criminal litigation, if FHFA has reason to believe that the individual to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

(4) To any individual with whom FHFA contracts to reproduce, by typing, photocopy or other means, any record within this system for use by FHFA and its employees in connection with their official duties or to any individual who is utilized by FHFA to perform clerical or stenographic functions relating to the official business of FHFA.

(5) To members of advisory committees that are created by FHFA or by Congress to render advice and recommendations to FHFA or to Congress, to be used solely in connection with their official, designated functions.

(6) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(7) To the Department of Justice when (a) FHFA, or any component thereof; or (b) any employee of FHFA in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice or FHFA has agreed to represent the employee; or (d) the United States, where FHFA determines that litigation is likely to affect FHFA or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice or FHFA is deemed by FHFA to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(8) To a Member of Congress, to a Congressional staff member or to a Congressional Committee in response to an inquiry from the Member of Congress, the Congressional staff member or Congressional Committee made at the written request of the individual about whom the record is maintained.

(9) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for FHFA.

(10) To appropriate federal agencies and other public authorities for use in records management inspections.

(11) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(12) To the Office of Management and Budget and the General Accountability Office when relevant and necessary to carry out their responsibilities or to perform other functions within their jurisdiction.

(13) To the Office of the Inspector General for investigating allegations of abuse or misconduct, or to perform other functions within the jurisdiction of the Office of the Inspector General.

(14) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FHFA employees.

(15) To the Department of the Treasury, Bureau of the Public Debt to provide financial management services and systems, including local and temporary duty travel, involving FHFA employees.

(16) To the Internal Revenue Service and appropriate State and local taxing authorities.

(17) To appropriate Federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States.

(18) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish and modify orders of child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, the Federal Parent Locator System and the Federal Tax Offset System.

(19) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social Security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement.

(20) To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return.

(21) To commercial benefit providers, carriers, vendors, contractor personnel, and agents to process claims and provide related administrative services involving FHFA employees.

(22) To any Federal, state, or local government agency compiling tax withholding, retirement contributions, or allotments to charities, labor unions, wage garnishments, and other authorized recipients.

(23) To any member of the public for employment verification at an employee's written request.

(24) To any judgment creditor for the purpose of wage garnishment.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in electronic format, paper form, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms, locked file cabinets, or locked safes.

RETRIEVABILITY:

The records are retrieved by the individual's name, Social Security number, birth date, or some other personal identifier.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Computerized records are safeguarded through use of access codes and other information technology security measures. Paper records are safeguarded by locked file rooms, locked file cabinets, or locked safes. Access to records is restricted to those who require the records in the performance of official duties related to the purposes for which the system is maintained.

RETENTION AND DISPOSAL:

The records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources Management, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

Record source is from the individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, time and attendance records, withholding certificates, third-party benefit providers, and other pay-related records prepared by the individual or the Office of Human Resources Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–16

SYSTEM NAME:

Personnel Investigative Records.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552; 1625 Eye Street NW., Washington, DC 20006; 1750 Pennsylvania Avenue NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees. For administrative purposes, duplicate systems may exist within FHFA at the duty station of each employee. For background investigations adjudicated by the Department of State (DOS) or the Office of Personnel Management (OPM), DOS and OPM may retain copies of those files pursuant to their records retention schedules.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current and former employees, detailees, interns, fellows, volunteers, persons who work at FHFA under the Intergovernmental Personnel Act, and current and former contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system contain the individual's name, date of birth, citizenship, current and former home addresses, work histories, education and financial information, Social Security number, information about family members, information about references, types and dates of investigations, investigative reports (including those from Federal and State law enforcement agencies, DOS, Department of Defense, OPM, and other federal entities), dates, levels and types of clearances, and any other information pertinent to granting or denying a security clearance or making a suitability determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, Security Requirements for Government Employment, dated April 27, 1953; and Executive Order 12958, Classified National Security Information, dated April 17, 1995.

PURPOSE(S):

The purpose of the system of records is to collect and maintain records of processing of personnel-security related clearance actions, to record suitability determinations, to record whether security clearances are issued or denied, and to verify eligibility for access to classified information or assignment to a sensitive position. Records may also be used for personnel actions, such as removal from sensitive duties, removal from employment, or revocation of a security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) When (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA 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 FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(2) Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a financial regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) To any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil or criminal litigation, if FHFA has reason to believe that the individual to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

(4) To any individual with whom FHFA contracts to reproduce, by typing, photocopy or other means, any record within this system for use by FHFA and its employees in connection with their official duties or to any individual who is utilized by FHFA to perform clerical or stenographic functions relating to the official business of FHFA.

(5) To members of advisory committees that are created by FHFA or by Congress to render advice and recommendations to FHFA or to Congress, to be used solely in connection with their official, designated functions.

(6) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(7) To the Department of Justice when (a) FHFA, or any component thereof; or (b) any employee of FHFA in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice or FHFA has agreed to represent the employee; or (d) the United States, where FHFA determines that litigation is likely to affect FHFA or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice or FHFA is deemed by FHFA to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(8) To a Member of Congress, to a Congressional staff member or to a Congressional Committee in response to an inquiry from the Member of Congress, the Congressional staff member or Congressional Committee made at the written request of the individual about whom the record is maintained.

(9) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for FHFA.

(10) To appropriate federal agencies and other public authorities for use in records management inspections.

(11) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(12) To the Office of Management and Budget and the General Accountability Office when relevant and necessary to carry out their responsibilities or to perform other functions within their jurisdiction.

(13) To the Office of the Inspector General for investigating allegations of abuse or misconduct, or to perform other functions within the jurisdiction of the Office of the Inspector General.

(14) To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request related to issuing a security clearance or conducting a security or suitability investigation of an individual. Only information that is relevant and necessary to the requesting agency's decision on the matter will be released.

(15) To verify a security clearance in response to an inquiry from a security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government. Also, to provide FHFA employees and contractor personnel access to classified data or areas, when their official duties require such access.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in electronic format, paper form, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms, locked file cabinets, or locked safes.

RETRIEVABILITY:

The records are retrieved by the individual's name, Social Security number, date of birth, or some other personal identifier.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Computerized records are safeguarded through use of access codes and other information technology security measures. Paper records are safeguarded by locked file rooms, locked file cabinets, or locked safes. Access to records is restricted to those who require the records in the performance of official duties related to the purposes for which the system is maintained.

RETENTION AND DISPOSAL:

The records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources Management, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

Record source is from the individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, the Office of Personnel Management and Departments of State and Defense investigative files, employment information maintained by FHFA's personnel office, current and former FHFA employees, other individuals who provide information during the course of an investigation, Federal law enforcement agencies, and external and internal inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), a record contained in this system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f), to the extent that disclosure would reveal the identity of a source who furnished information to the Federal Government under an express promise that his or her identity would be held in confidence.

Dated: December 28, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–33794 Filed 1–4–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011707–008.

Title: Gulf/South America Discussion Agreement.

Parties: BBC Chartering & Logistic GMBH & Co. KG; Industrial Maritime Carriers LLC; Seaboard Marine, Ltd.; and West Coast Industrial Express, LLC.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment removes West Coast Industrial Express as a party to the agreement.

Agreement No.: 012115–001.

Title: HSDG–CCNI USWC–Europe Vessel Sharing Agreement.

Parties: Compania Chilena De Navegacion Interoceanica, S.A and Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft KG.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment deletes Europe, Canada, Panama, and portions of the U.S. West Coast from the geographic scope of the agreement, reduces the number of vessels to be operated by the parties, revises the space allocations of the parties, and renames and restates the agreement.

Agreement No.: 012149.

Title: MSC/CMA CGM U.S. East Coast-West Coast South America Space Charter Agreement.

Parties: MSC Mediterranean Shipping Company, S.A. and CMA CGM, S.A.

Filing Party: Marc J. Fink, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes Med Shipping to charter space to CMA in the trade between the U.S. East Coast and the Bahamas, on the one hand, and the West Coast of South America, on the other.

By Order of the Federal Maritime Commission.

Dated: December 30, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–33808 Filed 1–4–12; 8:45 am]

BILLING CODE 6730–01–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, email 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: Teen Pregnancy Prevention Replication Evaluation Study: Baseline Data Collection—OMB No. OS–0990–NEW—The Office of Adolescent Health.

Abstract

The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH will jointly oversee with ASPE the Teen Pregnancy Prevention Replication Evaluation Study (TPP Replication Study). The TPP Replication Study will be a random assignment evaluation which will determine the extent to which evidence-based program models that have been shown to be effective in an earlier trial, demonstrate effects on adolescent sexual risk behavior and teenage pregnancy when they are replicated in similar and in different settings and for different populations.

The findings from this evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH and ASPE are proposing baseline data collection activity as part of the TPP Replication Evaluation. Respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy. Information from this data collection will be used to perform meaningful analysis to determine significant program effects.

Respondents: The survey data will be collected through private, self-administered questionnaires completed by study participants, i.e. adolescents assigned to a select school or community teen pregnancy prevention program or a control group. Surveys will be distributed and collected by trained professional staff.

Estimated Annualized Burden Table

Reporting Burden on Study Participants

TEEN PREGNANCY PREVENTION REPLICATION EVALUATION STUDY

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Baseline instrument	5,250	1	0.5	2,625

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–33827 Filed 1–4–12; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–0765]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call Daniel Holcomb, the CDC Reports Clearance Officer, at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Fellowship Management System, OMB No. 0920–0765—Revision—Scientific Education and Professional Development Program Office (SEPDPO), Office of Surveillance, Epidemiology and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

SEPDPO is requesting approval to revise and extend for three years; CDC's use of the online Fellowship Management System (FMS) to allow public health agencies and organizations to submit fellowship assignment proposals electronically, using FMS. The FMS system will continue to be used for its electronic application and directory processes that allow individuals to apply to fellowships online, track applicant and alumni information.

The mission of SEPDPO is to provide leadership in public health training and education, and manage innovative, evidence-based programs to prepare the health workforce to meet public health challenges of the 21st century. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professions seek opportunities, through CDC fellowships, to broaden their knowledge, skills, and experience to improve the science and practice of public health. CDC fellows are assigned to state, tribal, local and territorial public health agencies; federal government agencies, including CDC, and HHS operational divisions, such as Indian Health Service; and to nongovernmental organizations, including academic institutions, tribal

organizations, and private public health organizations.

FMS provides an efficient and effective way for processing fellowship application data, selecting qualified candidates, maintaining a current alumni database, documenting the impact of the fellowships on alumni careers, and generating reports. This proposed revision will provide a secure site within this existing electronic system for designated employees of public health agencies and organizations to submit fellowship assignment proposals electronically.

Designated employees of public health agencies or organizations will answer a standardized set of core questions within FMS about the proposed assignments, including the type of public health agency or organization submitting the proposal; proposed fellow activities, including training and opportunities for service and collaboration; and how the fellow will be supported, including the type and extent of mentorship and supervision the fellow will receive.

This revision enhances FMS to include a function that will result in a standardized process for submitting and reviewing host assignment proposals across fellowships. The electronic assignment proposal process that FMS provides optimizes the matching of qualified fellowship candidates with host sites and will result in an optimal fit between fellows and their assignments—ultimately leading to long-term employment and sustained public health capacity of state and local health departments and other non-federal public health agencies and organizations.

The annual burden table has been updated to reflect the number of respondents from nonfederal public health agencies or organizations that submit assignment proposals to host fellows. Some alumni are deceased or cannot be located. Response burden assumes response from an individual responding alumnus, on average, every 3 years (which is likely an overestimate of frequency). There is no cost to respondents other than their time. The total estimated annual burden hours are 1201.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average annualized burden per response (in hours)
Public Health Agency or Organization	226	1	1.5
Fellowship applicants	1122	1	40/60
Fellowship alumni	454	1	15/60

Dated: December 29, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–33798 Filed 1–4–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–12CO]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the National Tobacco Prevention and Control Public Education Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests OMB approval to collect information needed for evaluating the CDC's National Tobacco Prevention and Control Public Education Campaign (The Campaign). This campaign, which is expected to launch in February/March 2012, is the first Federally-funded media campaign in the U.S. that describes the harms from smoking and will feature televised advertisements that will air nationally along with complementary ads on radio, the Internet, in print, and other forms of media.

CDC plans to conduct an initial baseline survey of adults before the launch of The Campaign and a longitudinal follow-up survey of those participants approximately three to four months later. Information will be collected about adult smokers' awareness of and exposure to campaign advertisements, and about their knowledge, attitudes, and beliefs related to smoking and secondhand smoke. In addition, the survey will measure behaviors related to smoking cessation and behaviors related to interpersonal communication about smoking. Information will also be collected on demographic variables including age, sex, race, education, income, primary language, and marital status.

Data from this survey will be used to estimate the extent to which smokers and non-smokers in the U.S. were exposed to The Campaign and to examine the statistical relationships between adults' exposure to The Campaign and changes in outcome variables of interest including attempts to quit smoking.

Information will be collected through on-line questionnaires involving adult smokers and non-smokers in the U.S., ages 18–54. Respondents who are smokers will be recruited from two sources: a probability sample drawn from the Knowledge Networks KnowledgePanel®, a panel that uses address-based postal mail sampling to generate a probability-based online panel of U.S. adults, and a supplemental sample from SSI, a leading provider of online sampling in the U.S. Respondents who are non-smokers will be recruited from Knowledge Networks. The target number of complete pre-/post-campaign questionnaires for smokers is 5,000. The target number of

complete pre-/post-campaign questionnaires for non-smokers is 2,000.

To obtain the target number of complete pre-/post-campaign responses, approximately 34,660 respondents will be contacted through an initial screening and consent process. The estimated burden per response is two minutes.

An estimated 11,600 smokers will be recruited to complete the Smoker Baseline Questionnaire in order to yield 5,000 completed post-campaign Smoker Follow-Up Questionnaires. An estimated 2,666 non-smokers will be recruited to complete the Non-smoker Baseline Questionnaire in order to yield 2,000 completed post-campaign Non-smoker Follow-up Questionnaires. For both respondent groups, the estimated burden per response is 25 minutes for each baseline questionnaire. In addition, the estimated burden per response is 25 minutes for each post-campaign (follow-up) questionnaire.

Data from this information collection will be used to estimate awareness of and exposure to The Campaign among smokers and non-smokers nationally as well as among the planned subset of smokers in high-delivery geographic areas for The Campaign. These estimates will take the form of self-reported ad recognition and recall estimates that assess basic exposure as well as frequency of ad exposure. Data from this information collection will also be used to examine statistical associations between exposure to The Campaign and pre-post changes in specific outcomes of interest which will include knowledge, attitudes, beliefs and intentions related to smoking and cessation as well as behavioral outcomes including quit attempts and cigarette consumption.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated burden hours are 10,015.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Population	Screening and Consent Process	34,660	1	2/60
Adults, ages 18–54 in the U.S.	Smoker Baseline Questionnaire	11,600	1	25/60
	Smoker Follow-Up Questionnaire	5,000	1	25/60
	Non-Smoker Baseline Questionnaire	2,666	1	25/60
	Non-Smoker Follow-up Questionnaire	2,000	1	25/60

Dated: December 29, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–33799 Filed 1–4–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 PR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 66308–66309, dated October 26, 2011) is amended to reflect the reorganization of the Financial Management Office within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete items (1), (2) and (3) of the functional statements for the Financial Management Office (CAJE), and insert the following: (1) Provides leadership and coordination in the development and administration of the Centers for Disease Control and Prevention's (CDC) financial management policies; (2) provides leadership and advice on matters of public health policy, budget formulation, budget and performance integration, and Congressional appropriations for CDC and the Agency for Toxic Substances and Disease Registry (ATSDR); (3) collaborates with the CDC Office of the Director (OD) in the development and implementation of long-range, strategic program and financial plans;

Delete in its entirety the title and functional statements for the Travel Management Activity (CAJE12).

Delete in its entirety the title and functional statements for the Office of Organizational Excellence (CAJE13) and the Office of Formulation, Evaluation, and Analysis (CAJE14) and insert the following:

Office of Management Services (CAJE13). (1) Collaborates and maintains liaison with CDC management officials to monitor and address priority issues of concern to CDC leadership; (2) manages the Financial Management Office's (FMO) operational budget processes, including planning, execution, and monitoring; (3) manages FMO's acquisition processes; (4) analyzes and provides recommendations on workload efficiency and resource utilization; (5) provides direction, strategy, analysis, operational support, and recommendations in matters concerning organizational performance and management services within FMO; (6) coordinates the development of, and maintains, strategic management and performance measurement tools within FMO; (7) monitors FMO organizational performance and provides recommendations on performance improvement; (8) provides management, oversight, and administrative support for FMO service desk operations; (9) provides direction, strategy, analysis, and operational support in all aspects of FMO's human resources operations; (10) provides leading practices in government financial management practices to FMO; (11) develops, implements, and manages recruiting, hiring, retention, and succession strategies; (12) coordinates creation and implementation of operating standards/procedures and processes, and monitors compliance; (13) develops, implements, and manages professional development strategy and plan for FMO; (14) develops and implements FMO's communication strategy and plan; (15) manages the development and communication of financial management policies; (16) serves as FMO's point of contact on all matters concerning facilities management and space utilization; and (17) serves as FMO's coordinator of COOP activities.

Appropriations, Legislation, and Formulation Office (CAJE14). (1)

Provides leadership, consultation, guidance, and advice on matters of public health and financial policy; (2) leads all CDC/ATSDR Congressional appropriations activities; (3) develops CDC/ATSDR's annual financial and public health policy request in accordance with DHHS, Office of Management and Budget (OMB), and Congressional requirements, policies, procedures, and regulations; (4) maintains liaison with the DHHS, OMB, other government organizations, and Congress on appropriations and financial policy matters; (5) develops materials for, and participates in, public health policy and financial reviews and hearings before DHHS, OMB, and Congress; (6) collaborates with other parts of CDC, and outside stakeholders, in the development and implementation of agency-wide financial and public health program plans; and (7) provides guidance and advice on the consolidation of budget and performance information as part of CDC's annual budget request.

Delete the functional statements for the Accounting Branch (CAJEB) and the Commercial Payment Branch (CAJEE) and insert the following:

Accounting Branch (CAJEB). (1) Oversees and provides accounting for the Agency; (2) manages accounting treatment for CDC on all business systems implementations and upgrades to current business systems; (3) manages all financial audit reviews for FMO and conducts risk assessment on internal controls; (4) prepares SF 133 Report on Budget Execution for CDC Appropriation and IDDAs, FACTS I and IT Report and Year-End Closing Statement (2108 Report), and SF 224 or their equivalent and all other required financial reports as applicable; (5) prepares, analyzes fluctuations, and coordinates explanation for differences on all required financial statements and notes: (6) performs GPRA reporting analysis for compliance; (7) ensures compliance of Federal and Department reporting requirements; (8) coordinates accounting policy issues with the Department of Health and Human Services (DHHS) Office of Financial Policy and FMO's Office of Management Services; (9) manages Fund Balance with Treasury, including authority, disbursements (payroll and non-payroll), collections, deposit funds and budget clearing accounts; (10) prepares manual and ADI journal vouchers for corrections to the general ledger; (11) performs monthly, quarterly, and year-end close out process of the general ledger; (12) serves as liaison with the Procurements and Grants Office, Buildings and Facilities Offices, Program Offices, and Budget Execution Services on capital asset procedures; (13) manages financial accounting for all assets for CDC, including real and personal property, equipment, land, leases, software, personal property, and stockpiles; (14) conducts financial and inventory reconciliations for all applicable assets, including inventory such as Vaccine for Children and Strategic National Stockpile, real and personal property, equipment, leases, leasehold improvements, land, and others as needed; (15) leads and directs grants management activities within FMO; (16) provides training and assistance to CDC project officers and grants management officials on various financial management aspects of grants; (17) serves as liaison with grantees and other operating divisions for financial questions/inquiries related to grants; (18) manages the process to perform grant processing for commitments, obligations, advances, disbursements, and accruals; (19) manages grants transactions, such as vendor set-up, establishing sub-accounts, Common Accounting Number set-up within the Payment Management System (PMS), reconciling sync file to PMS, and posting files from PMS; (20) conducts grant reviews, monitors rates of expenditure for existing grant awards, and supports Program in grant execution; and (21) records undelivered order adjustments or obligations as needed.

Commercial Payment Branch (CAJEE). (1) Manages all activities, policies, quality control, and audit support for accounts payable and disbursement functions for commercial payments; (2) serves as the CDC subject matter expert on all financial matters dealing with commercial payments; (3) ensures all commercial payments are made in accordance with applicable Federal laws and standards, such as Appropriations Law; (4) serves as liaison with the Department of Treasury, the Centers/Institutes/Offices (CIO's), as well as outside customers, to provide financial information and reconcile commercial payment issues; (5) provides training and advice on commercial payment and disbursement issues; (6) manages transactions related to commercial accounts payable and disbursements; (7) completes all reconciliations of sub-legers to general ledger related to commercial payments; (8) compiles and submits a variety of cash management and commercial reports required by Treasury and various outside agencies; (9) responds to commercial inquiries for invoices and certifies payments; (10) performs Quality Control and Quality Assurance reviews and participates in internal reviews; and (11) assists with undelivered order adjustments or obligations as needed.

Delete in its entirety the title and function statements for the Grants and Asset Management Branch (CAJEK).

After the functional statements for the Budget Execution Branch 6 (CAJES) insert the following:

Travel, IPAC, and International Payment Branch (CAJET). (1) Manages all activities, policies, quality control, and audit support for accounts payable and disbursement functions for travel, IPAC, and international payments; (2) serves as the CDC subject matter expert on all financial matters dealing with all travel, IPAC, and international payments; (3) ensures all travel, IPAC, and international payments are made in accordance with applicable Federal and international laws and standards, such as appropriations law; (4) serves as liaison with the Department of Treasury, the CIOs, as well as outside customers, to provide financial information and reconcile travel, IPAC, and international payment issues; (5) compiles and submits a variety of cash management and travel reports required by the Department of Treasury and various other outside agencies; (6) provides training and advice on payment, travel and disbursement issues; (7) manages transactions related to accounts payable, such as processing cables, reimbursements, IPAC disbursements, and payments for Foreign nationals and visiting fellows; (8) completes all reconciliations of sub-legers to general ledger related to travel, IPAC, and international payments; (9) responds to traveler inquiries for vouchers and certifies payments; (10) manages change of station payment processing; (11) perform quality control and quality assurance reviews; (12) provides expertise, guidance, oversight, and interpretation of policies, laws, rules and regulations for all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (13) communicates and implements departmental travel policies; (14) manages the administrative aspects of travel for the agency, including enforcement of travel card policy, delegation of authority, distribution of cash purchase memos, and approval of first-class memos; (15) serves as liaison with travel provider for travel contract matters; (16) provides the CDC's

Emergency Operations Center travel support; and (17) develops CDC conference travel planning and reporting for DHHS and Congress.

Dated: December 22, 2011.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–33791 Filed 1–4–12; 8:45 am]

BILLING CODE 4163–18–M

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, PAR–11–259: Pregnancy in Women with Disabilities.
Date: January 24, 2012.
Time: 11 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscah Mujuru, RN, MPH, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *mujurup@mail.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Cancer Etiology Study Section.
Date: January 30–31, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.
Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Developmental Therapeutics Study Section.
Date: January 30–31, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.
Contact Person: Sharon K Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Clinical, Integrative and Molecular Gastroenterology Study Section.
Date: January 30, 2012.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mushtaq A Khan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, *khanm@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B Study Section.
Date: January 30–31, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Los Angeles Airport Hotel, 5400 West Century Boulevard, Los Angeles, CA 90045.
Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Program Project, Proteome Technologies.
Date: January 30, 2012.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Los Angeles Airport Hotel, 5400 W Century Boulevard, Los Angeles, CA 90045.
Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndromes.
Date: January 31–February 1, 2012.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@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: December 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33834 Filed 1–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Pilot Clinical Studies in Nephrology and Urology.
Date: January 12–13, 2012.
Time: 8 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: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814 Bethesda, MD 20892, (301) 435–1501, *morrisr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.
Date: January 31, 2012.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Washington DC, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology 2.

Date: January 31, 2012.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Washington DC, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–228: Shared Instrumentation: Cell Biology, Physiology and Robotics.

Date: February 1, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Dr., Bethesda, MD 20872, (301) 435–2204, *Lorand@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Multidisciplinary Healthcare Delivery Research AREA Grant Applications.

Date: February 2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001.

Contact Person: Priscah Mujuru, RN, MPH, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *mujurup@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pathophysiology and Clinical Studies of Osteonecrosis of the Jaw.

Date: February 3, 2012.

Time: 11 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: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1781, *liuyh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AREA Topics in Infectious Diseases and Microbiology.

Date: February 3, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 996–5819, *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: Innovations in Molecular Imaging Probes.

Date: February 3, 2012.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@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: December 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33836 Filed 1–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.

Date: February 6–7, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Mark D. Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 435–0913, *lindnermd@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 6, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–0229, *gary.hunnicutt@nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: February 6–7, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, (301) 435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Clinical Oncology Study Section.

Date: February 6–7, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806–2515, *chatterm@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Neuroscience and Ophthalmic Technologies Study Section.

Date: February 6–7, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, (301) 379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Aging Systems and Geriatrics Study Section.

Date: February 6, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, (301) 435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Diseases and Pathophysiology of the Visual System Study Section.

Date: February 6–7, 2012.

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: Jerry L Taylor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.

Date: February 6–7, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: NCRR High End Grant Program.

Date: February 7, 2012.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, (301) 379–3793, *bennetty@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: December 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33835 Filed 1–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4042–DR; Docket ID FEMA–2011–0001]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4042–DR), dated November 4, 2011, and related determinations.

DATES: *Effective Date:* December 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 4, 2011.

Culpeper, Fluvanna, Goochland, and Orange Counties for Individual Assistance.

Spotsylvania County and the City of Fredericksburg for Individual Assistance (already designated for Public Assistance).

Culpeper and Northampton Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–33778 Filed 1–4–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–20118]

Intent To Request Renewal From OMB of One Current Public Collection of Information; Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, DC, Area

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0029, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection requires individuals to successfully complete a security threat assessment in order to operate an aircraft to or from one of the three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports), or to serve as an airport security coordinator at one of these three airports.

DATES: Send your comments by March 5, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control

number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0029; Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, DC Area, 49 CFR part 1562. Codified under 49 CFR part 1562, TSA has responsibility for ground security requirements and security procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports), and for individuals operating aircraft to or from these three airports. The Maryland Three Airports are College Park Airport (CGS), Potomac Airfield (VKX), and Washington Executive/Hyde Field (W32). The information collected is used to determine compliance with 49 CFR part 1562.

Part 1562 allows an individual who is approved by TSA to operate an aircraft to or from one of the Maryland Three Airports or to serve as an airport security coordinator in one of these three airports. In order to be approved, an individual is required to successfully complete a security threat assessment. As part of this threat assessment, an individual (pilot or airport security coordinator) is required to undergo a criminal history records check and a check of Government terrorist watch lists and other databases to determine whether the individual poses, or is suspected of posing, a threat to transportation or national security. An individual will not receive TSA's approval under this analysis if TSA determines or suspects the individual of being a threat to national or transportation security. Prospective pilots must be fingerprinted at the Ronald Reagan Washington National Airport's (DCA) badging office with the airport security coordinator, as well as provide the following information to TSA as part of the application process: full name, Social Security number, current Airmen Certificate and medical certificate, date of birth, home address, home and work phone numbers, email address, emergency contact number, aircraft make and model, and FAA aircraft registration number. TSA receives approximately 312 applications annually, and estimates respondents spend approximately 180 minutes to submit the information to TSA, which is a total annual burden of 56,160 hours.

Issued in Arlington, Virginia, on December 29, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–33792 Filed 1–4–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV05600.L14300000 .EU0000.LVTFF1000770.241A00; N–76649; 12–08807; TAS: 14X5232]

Correction for Conveyance of Public Lands for Recreation and Public Purposes in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This Notice corrects a Notice of Realty Action published in the **Federal Register** on April 26, 2004, (69 FR22547–22548), which listed an incorrect legal land description for the South Hills Church Community in the City of Las Vegas, Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT: Shawna Woods, (702) 515–5099, or email: *swoods@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The erroneous legal land description is on page 22547, 3rd column, line 6. The legal land description is corrected to read:

Mount Diablo Meridian

T. 22 S., R. 61 E.,

Sec. 24, N½SW¼SE¼NE¼, N½SE¼SE¼NE¼.

The area described contains 10 acres, more or less in Clark County, Nevada.

Authority: 43 CFR 2741.5.

Vanessa L. Hice,

Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 2011–33809 Filed 1–4–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–65891, L51010000 ER0000 LVRWH09H0560 LLORB00000]

Notice of Availability of the Record of Decision for the North Steens 230 Kilovolt Transmission Line, Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the North Steens 230 kilovolt (kV) Transmission Line Project. The Secretary of the Interior approved the ROD on December 28, 2011, which constitutes the Department's final decision.

ADDRESSES: Copies of the ROD are available upon request from the District Manager, BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, or at the following Web site: *http://www.blm.gov/or/districts/burns/plans/index.php.*

FOR FURTHER INFORMATION CONTACT: Skip Renchler, Realty Specialist, telephone; (541) 573–4443; address; BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738; email: *BLM_OR_BU_NS_Transmission_Line_EIS@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, Echanis, LLC, a subsidiary of Columbia Energy Partners, LLC, filed right-of-way (ROW) applications for ROWs with the BLM and the U.S. Fish and Wildlife Service for construction, operation, maintenance, and termination of a 29-mile-long, 230kV transmission line that would connect the proposed Echanis Wind Energy Project, located on private land on the north end of Steens Mountain, with Harney Electric Cooperative's existing transmission system near Diamond Junction, Oregon.

The ROD approves the BLM-preferred Alternative, now the Selected Alternative, and will result in the grant

of ROWs for construction, operation, maintenance and termination of a 230-kV transmission line, tensioning sites and related access across lands administered by the BLM. The route for the Selected Alternative would originate at the Echanis Wind Energy Project substation, south of Diamond, Oregon and connect to Harney Electric Cooperative's existing 115-kV transmission line near Crane, Oregon. The Selected Alternative would not cross the Malheur National Wildlife Refuge administered by the U.S. Fish and Wildlife Service. This alternative will enable the construction of the Echanis Wind Energy Project on private land. The effects of the wind project on private land are analyzed in the Final Environmental Impact Statement (EIS) because they are ''connected actions'' under the National Environmental Policy Act of 1969.

This BLM-preferred Alternative was evaluated in the Final EIS. The Notice of Availability of the Final EIS for the North Steens 230kV Transmission Line Project was published in the **Federal Register** on October 21, 2011 (76 FR 65509).

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6.

Mike Pool,

Deputy Director, Bureau of Land Management.

[FR Doc. 2011–33810 Filed 1–4–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–1211–9092; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 10, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by January 20, 2012. 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.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

FLORIDA

Miami-Dade County

Bryan, William Jennings, House, 3115 Brickell Ave., Miami, 11001029

ILLINOIS

Winnebago County

Garrison—Coronado—Haskill Historic District, Roughly bounded by Salem, Summer, Main, Court, Whitman & Winnebago Sts., & Fisher, Ridge, & North Aves., Rockford, 11001030

KANSAS

Cowley County

Winfield National Bank Building, 901 Main St., Winfield, 11001031

Marion County

Peabody City Park (New Deal-Era Resources of Kansas MPS), W. 2nd & Locust Sts., Peabody, 11001032

Riley County

Rocky Ford School (Public Schools of Kansas MPS), 1669 Barnes Rd., Manhattan, 11001033

Shawnee County

ATSF Motive Power Building, 1001 NE. Atchison, Topeka, 11001034

Church of the Holy Name, 1110 SW. 10th Ave., Topeka, 11001035

Harmon, John C., House, 915 SW. Buchanan, Topeka, 11001036

Wyandotte County

Kansas City, Kansas High School Gymnasium and Laboratory, (Public Schools of Kansas MPS), 1017 N. 9th St., Kansas City, 11001038

Mann, Horace, Elementary School (Public Schools of Kansas MPS), 824 State Ave., Kansas City, 11001037

MINNESOTA

Hennepin County

Buzza Company Building, 1006 W. Lake St., Minneapolis, 11001039

St. Louis County

Engine House No. 1, 101 E. 3rd St., Duluth, 11001040

NEW JERSEY

Ocean County

Bartlett—Rockhill—Bartlett House, Bartlett Ln., Tuckerton, 11001041

NORTH CAROLINA

Edgecombe County

Lincoln Park Historic District, 800 blk. Ellison Dr., 800–900 & 1000–1002 Leggett Rd. & 800 Carver Pl., Rocky Mount, 11001042

SOUTH CAROLINA

Marlboro County

McLaurin—Roper—McColl Farmstead, 1104 Laurin Willis Rd., Clio, 11001043

UTAH

Wayne County

Horseshoe Canyon Archeological District (Boundary Increase), Horseshoe Canyon Detached Unit, Canyonlands NP., Hanksville, 11001044

WISCONSIN

Clark County

Tufts, William B. and Jennie, House, 321 E. 4th St., Neillsville, 11001045

[FR Doc. 2011–33790 Filed 1–4–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[DN 2861]

Certain Portable Communication Devices; Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *In Re Certain Portable Communication Devices,* DN 2861; the Commission is soliciting comments on any public interest issues raised by the amended complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint, as amended, filed on behalf of Digitude Innovations LLC on December 16, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable communication devices. The complaint names Research In Motion Ltd. of Canada; Research In Motion Corp. of Irving, TX; HTC Corporation of Taiwan; HTC America, Inc. of Bellevue, WA; LG Electronics, Inc. of South Korea; LG Electronics U.S.A. Inc. of Englewood Cliffs, NJ; LG Electronics MobileComm U.S.A. Inc. of San Diego, CA; Motorola Mobility Holdings, Inc. of Libertyville, Illinois; Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Telecommunications America, LLC of Richardson, TX; Sony Corporation of Japan; Sony Corporation of America of New York, NY; Sony Electronics, Inc. of San Diego, CA; Sony Ericsson Mobile Communication AB of Sweden; Sony Ericsson Mobile Communication (USA) Inc. of Research Triangle Park, NC; Amazon.com, Inc. of Seattle, WA; Nokia Corporation of Finland; Nokia Inc. of Irving, TX; Pantech & Curitel Communication, Inc. of South Korea; Pantech Wireless, Inc. of Atlanta, Georgia as respondents.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2861'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf.* Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: December 29, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–33771 Filed 1–4–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Natural Resource Damages Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 29, 2011, a proposed Consent Decree in *United States and State of New Mexico* v. *Freeport-McMoRan Corp. et al.* (''Freeport-McMoRan Consent Decree''), Civil Action No. 1:11–cv–1140 (D. N.M.), was lodged with the United States District Court for the District of New Mexico.

The Complaint in this case was filed against Freeport-McMoRan Corporation, Freeport-McMoRan Chino Mines Company, Freeport-McMoRan Tyrone Inc., Freeport-McMoRan Tyrone Mining LLC, and Freeport-McMoRan Cobre Mining Company (collectively ''Freeport-McMoRan'') on December 29, 2011. The cause of action is based on Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607(a). The Complaint alleges that Freeport-McMoRan is civilly liable for payment of damages for injuries to natural resources belonging to, managed by, or controlled by the United States and the State of New Mexico that resulted from hazardous substance releases at and from Freeport-McMoRan's Chino Mine, Tyrone Mine, and Cobre Mine in southwestern New Mexico. The Complaint further alleges that surface waters, ground water, terrestrial habitat and wildlife, and migratory birds have been injured, destroyed, or lost as a result of releases of hazardous substances at and from the mine sites.

Under the settlement, Freeport-McMoRan will pay $5.5 million to the United States Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, which can be used to restore, rehabilitate, replace, or acquire the equivalent of wildlife and wildlife habitat injured, destroyed, or lost as a result of releases at the mine sites. Freeport-McMoRan will also convey to

the New Mexico State Parks Division approximately 715 acres of land adjacent to the City of Rocks State Park in Grant County, New Mexico to further offset natural resource losses at the mine sites. Finally, Freeport-McMoRan will reimburse the Department of Interior's remaining unpaid past natural resource damage assessment costs, which amount to $59,750.99.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Freeport-McMoRan Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees-enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of New Mexico* v. *Freeport-McMoran Corp. et al.,* Case No. 1:11–cv–1140 (D. N.M.), D.J. Ref. 90–11–3–08069.

During the public comment period, the Freeport-McMoRan Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Freeport-McMoRan Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $14.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–33803 Filed 1–4–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 29, 2011, a proposed Consent Decree (''Decree'') in *United States and State of Rhode Island* v. *Ashland, Inc., et al.,* Civil Action No. 11–558, was lodged with the United States District Court for the District of Rhode Island.

The Decree resolves claims of the United States and the State of Rhode Island pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607, against seven parties in connection with the Davis Liquid Waste Superfund Site located in Smithfield, Rhode Island (''Site''). The Decree requires the settling defendants to perform the remedial action selected in the Amended Record of Decision (''Amended ROD'') issued on September 20, 2010.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Rhode Island* v. *Ashland, Inc., et al.,* Civil Action No. 11–558, D.J. Ref. 90–11–2–137/3.

During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library, please enclose a check in the amount of $71.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above. If requesting a copy exclusive of exhibits, please enclose a check in the amount of $17.00.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–33804 Filed 1–4–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 29, 2011, a proposed consent decree in *United States, et al.* v. *Essroc Cement Company,* Civil Action No. 2:11–cv–0650–DSC was lodged with the United States District Court for the Western District of Pennsylvania.

In this action the United States and Indiana, Pennsylvania, Puerto Rico and West Virginia sought injunctive relief and civil penalties for violations of the following statutory and regulatory requirements of the Clean Air Act (the ''Act'') at Essroc cement plants: the Prevention of Significant Deterioration (''PSD'') provisions of the Act, 42 U.S.C. 7470 to 7492; the nonattainment New Source Review (''nonattainment NSR'') provisions of the Act, 42 U.S.C. 7501 to 7515; the federally-approved and enforceable state implementation plans, or SIPs, which incorporate and/or implement the above-listed Federal PSD and/or nonattainment NSR requirements; and, Title V of the Act, 42 U.S.C. 7661 to 7661f, and Title V's implementing Federal and state regulations. The proposed consent decree requires installation and continuous operation of a selective non-catalytic reduction system (SNCR) for NO_X at five cement kilns. The proposed consent decree also requires testing a selective catalytic reduction system (SCR) for NO_X control at two cement kilns. If the SCR tests are unsuccessful, Essroc will apply SNCR at each of the kilns. For controlling SO_2, Essroc will install a Dry Scrubber/Lime Injection system at seven cement kilns. Two cement kilns, under the proposed settlement, will be permanently retired. As mitigation for violations under the Act, Essroc will replace old engines in several off-road vehicles at its facilities. Essroc will also pay a civil penalty of $1.7 million, with 50 percent ($850,000) payable to the United States and the remainder allocated among the four states.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Essroc Cement Company,* Civil Action No. 2:11–cv–0650–DSC (DJ No. 90–5–2–1–09608).

During the public comment period, the proposed consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the

proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $21.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, please forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–33821 Filed 1–4–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Under the Resource Conservation and Recovery Act and the Clean Water Act

Notice is hereby given that on December 22, 2011, a proposed Consent Decree in *United States* v. *County of Erie* (''Erie''), Civil Action No. 1:11–cv–01083 (WMS), was lodged with the United States Court for the Western District of New York.

The proposed Consent Decree resolves Erie's Resource Conservation and Recovery Act (''RCRA'') violations stemming from its failure to meet cathodic protection requirements, release detection requirements, and other record-keeping requirements in to relation to its Underground Storage Tanks (''USTs'') at sixteen facilities throughout the county. The Consent Decree also resolves Erie's Clean Water Act (''CWA'') violations stemming from its failure to prepare and implement Spill Prevention Control and Countermeasure plans (''SPCC plans'') at eleven facilities throughout the county that utilize applicable above ground storage tanks. Under the terms of the Consent Decree, Erie will pay a $275,000 penalty, prepare and implement eleven SPCC plans, and undertake a full RCRA audit to certify to the United States that it is in complete compliance with all RCRA requirements at the thirty-six facilities it owns or operates that utilize USTs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matter as *United States* v. *County of Erie,* D.J. Ref. 90–7–1–09728.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *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 emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2011–33805 Filed 1–4–12; 8:45 am]

BILLING CODE 4410–15–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66067; File No. SR–CBOE–2011–127]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

December 29, 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 December 20, 2011, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its CBOE*direct* Connectivity Charges. Currently, the CBSX Fees Schedule applies CBOE's CBOE*direct* Connectivity Charges to CBSX users.[3] However, CBOE recently filed a proposed rule change to increase its CBOE*direct* Connectivity Charges.[4] Because CBSX does not desire to adopt all of the proposed changes to CBOE's CBOE*direct* Connectivity Charges, CBSX hereby proposes to amend its Fees Schedule to adopt its own CBOE*direct* Connectivity Charges.

Currently, CBSX assesses a monthly Network Access Port fee of $250 for regular access and $500 for Sponsored User access, as those are the amounts of the Network Access Port fees on CBOE. In SR–CBOE–2011–121, CBOE proposes to increase the fees charged for access to a Network Access Port to $500 per month for regular access and $1000 per month for Sponsored User access. CBSX desires to keep the Network Access Port fee rates at their current levels and not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBSX Fees Schedule, Section 1.

[4] *See* SR–CBOE–2011–121.

increase them to the levels proposed by CBOE.

CBOE also proposes to increase their monthly CMI and FIX charges from $80 to $500 per month for regular access and $160 to $1000 per month for Sponsored User access.[5] CBSX does not desire to adopt these increases. Instead, CBSX proposes to adopt more moderate increases, from $80 to $100 for regular access and $160 to $200 for Sponsored User access. Sizable investment [sic] were recently made to upgrade the equipment involved in the CMI Client Application Servers and FIX Ports, and thereby increasing these fees will help recoup such costs and maintain such equipment in the future. Moreover, following these changes, CBSX connectivity costs will still be lower than those assessed for connectivity at other exchanges. Along with the proposed CBOE changes, ISE assesses a FIX fee of $1200 for a minimum of two monthly login IDs (so, $600 for one), or a fee of $2,400 for a higher-volume user.[6] The NASDAQ Stock Market LLC's Options Market (''NOM'') assesses a fee of $500 per FIX port per month, as well.[7] Regarding the Sponsored User fees, the Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion.

The proposed changes are to take effect January 1, 2012.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4)[9] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. The proposed ''change'' to add the Network Access Port fees into the CBSX Fees Schedule is reasonable because the amounts of the fees are not changing. This proposed ''change'' is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants, and in the same amounts as previously assessed.

The proposed changes to increase the fees assessed for CMI Login IDs and FIX Login IDs are also reasonable because the amounts of such fees are significantly lower than those assessed on other exchanges,[10] and because such increases will assist in recouping expenditures recently made to upgrade the CBOE*direct* connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–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–CBOE–2011–127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–127 and should be submitted on or before January 26, 2012.

[5] *See* SR–CBOE–2011–121.

[6] *See* ISE Schedule of Fees, page 8. The Commission notes that the ISE fees cited by the Exchange were modified as of December 1, 2011. As of December 23, 2011, ISE assesses a FIX fee of $1000 for a minimum of two monthly login IDs and does not have a separate fee for a higher-volume user. *See* Securities Exchange Act Release No. 65916 (December 8, 2011), 76 FR 77881 (December 14, 2011) (SR–ISE–2011–80).

[7] *See* NOM Rule 7053.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* ISE Schedule of Fees, page 8 *and* NOM Rule 7053 *and also* SR–CBOE–2011–121.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33789 Filed 1–4–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66070; File No. SR–OCC–2011–13]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendments No. 1, No. 2, and No. 3, Relating to Relative Performance Indexes

December 29, 2011.

I. Introduction

On September 21, 2011, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2011–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 11, 2011.[3] On November 17, 2011, OCC filed Amendment No. 2 and Amendment No. 3 to the proposed rule change. The proposed rule change, as modified by Amendments No. 1, No. 2 and No. 3 was published in the **Federal Register** on November 29, 2011.[4] The Commission received no comment letters on the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3. This order approves the proposed rule change as modified by Amendments No. 1, No. 2, and No. 3.

II. Description

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes (''Alpha Index Options'') that measure the relative total returns of a stock or exchange-traded fund (''ETF'') against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF.[5] Generally, OCC believes that a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which a reference security of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is adding an interpretation following Section 2 in Article XVII of its By-Laws,[6] clarifying that OCC will clear and treat as securities any relative performance index. The Commission and Commodity Futures Trading Commission (''CFTC'') have previously approved changes to OCC's By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.[7]

In its capacity as a ''derivatives clearing organization'' registered as such with the CFTC, OCC filed the proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the ''CEA'') in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA. OCC amended the rule filing at the request of the CFTC to clarify that OCC will clear and treat as options on securities any options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of gold or silver.[8]

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions.[9] The proposed rule change is similar to a proposed rule change the Commission approved previously with respect to the jurisdictional status CBOE Gold ETF Volatility Index and clarifies that OCC will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold or silver. Any uncertainty regarding the jurisdictional status of a product could presumably interfere with OCC's ability to provide clearance and settlement services with respect to the product. The proposed rule change, by allowing OCC to clarify in its rules the treatment of a relative performance index, should facilitate the clearance and settlement of such products and, thus, should help promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3, (File No. SR–OCC–2011–13) be, and hereby is, approved.[12]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33795 Filed 1–4–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65483 (October 4, 2011), 76 FR 62981 (October 11, 2011).

[4] Securities Exchange Act Release No. 65807 (September 21, 2011), 76 FR 73752 (November 29, 2011).

[5] The staff notes that on August 17, 2011, the Commission issued an Order granting approval to this proposed rule change. *See* Securities Exchange Act Release No. 34–65149, 76 FR 52729 (August 23, 2011).

[6] The staff notes that OCC is also adding a definition of ''relative performance index'' to Section 1, which will be defined as an index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index.

[7] *See* Securities Exchange Act Release No. 34–62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

[8] The staff notes that Amendment Nos. 2 and 3 provide that the interpretation will not include options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of a commodity other than gold or silver.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66071; File Nos. SR–CBOE–2011–107 and SR–NSX–2011–14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated and National Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Changes in Connection With the Proposed Acquisition of the National Stock Exchange, Inc. by CBOE Stock Exchange, LLC

December 29, 2011.

I. Introduction

On November 28, 2011, each of the Chicago Board Options Exchange, Incorporated (''CBOE'') and the National Stock Exchange, Inc. (''NSX'') 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] proposed rule changes in connection with the proposed acquisition of NSX by CBOE Stock Exchange, LLC (''CBSX'') (the ''Transaction''). On December 2, 2011, the proposed rule changes were published for comment in the **Federal Register**.[3] The Commission received no comments on either proposed rule change. This order approves each of the proposed rule changes on an accelerated basis.

II. Background

A. The Transaction

Currently, NSX is wholly and directly owned by NSX Holdings, Inc. (''NSX Holdings''). Under a Purchase Agreement (the ''Purchase Agreement'') dated September 28, 2011 by and between NSX, NSX Holdings, and CBSX, CBSX would acquire all of the outstanding capital stock of NSX on the date of or after all conditions precedent to closing have been satisfied or waived, including approval by the Commission of these proposed rule changes.[4]

Following the completion of the Transaction, NSX would become a wholly-owned subsidiary of CBSX. NSX would remain a Delaware for-profit stock corporation, with the authority to issue 1,000 shares of common stock, 100 shares of which would be issued and would be held in their entirety by CBSX. At all times, all of the outstanding stock of NSX would be owned by CBSX. NSX would remain registered as a national securities exchange under Section 6 of the Act,[5] and accordingly, NSX would remain a self-regulatory organization (''SRO'').[6]

NSX has proposed to amend its Certificate of Incorporation and By-Laws to reflect and address the acquisition of NSX by CBSX following the Transaction. In addition, NSX has proposed other changes to its governing documents that are not directly related to the Transaction to update and enhance the governing documents and generally make them consistent with parallel provisions contained in the governing documents of other SROs. These changes are discussed below.

B. CBSX

In 2007, the Commission approved the establishment of CBSX as a facility [7] of CBOE.[8] As the SRO for CBSX, CBOE has regulatory responsibility for the activities of CBSX. CBSX administers the CBOE Stock Exchange, a fully automated trading platform for securities other than options (the ''CBSX Trading Facility''). As a limited liability company, the governance structure and operating authority of CBSX are set forth in the Operating Agreement of CBSX (''CBSX Operating Agreement'') and the CBSX Certificate of Formation. In connection with the establishment of the CBSX Trading Facility, CBOE adopted Rule 3.32 pertaining to ownership concentration and affiliation limitations.[9]

As a limited liability company, ownership of CBSX is represented by limited liability membership interests. The holders of such interests are referred to as ''Owners.'' CBOE is one of the Owners of CBSX and owns all outstanding ''Series A'' Voting Shares [10] of CBSX, representing just under 50% of all outstanding shares of CBSX.[11] The outstanding ''Series B'' Voting Shares of CBSX are held by nine broker-dealers.

As provided in Section 8.9 of the CBSX Operating Agreement, the outstanding Series A Voting Shares, in the aggregate, are entitled to a number of votes equal to 50% of the total number of Voting Shares outstanding on each matter submitted to a vote of the Owners. Each outstanding Series B Voting Share is entitled to one vote on each matter submitted to a vote of the Owners.[12]

The CBSX Approval Order and the CBSX Notice of Filing describe various characteristics of CBSX, including: the relationship between CBSX and CBOE; changes in control of CBSX; the regulatory jurisdiction of the Commission and CBOE over the controlling parties and the Owners; and the ownership and voting restrictions on Owners.[13] These provisions, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65843 (November 28, 2011), 76 FR 75577 (December 2, 2011) (SR–CBOE–2011–107) (''CBOE Notice'') and 65842 (November 28, 2011), 76 FR 75586 (December 2, 2011) (SR–NSX–2011–14) (''NSX Notice'').

[4] Conditions precedent to closing the Transaction are formal requirements set forth in the Purchase Agreement and include delivery of certain documents (such as officers' certificates, legal opinions, and agreements), compliance by each party with specified representations, warranties and covenants, and receipt of necessary approvals by each party. *See* NSX Notice, *supra* note 3, at note 1.

[5] 15 U.S.C. 78f.

[6] NSX would continue to adhere to the undertakings in the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Act, Making Findings, and Imposing Sanctions, including those related to a Regulatory Oversight Committee and the separation of the regulatory functions from the commercial interests of NSX. *See* Securities Exchange Act Release No. 51714 (May 19, 2005).

[7] 15 U.S.C. 78c(a)(2).

[8] *See* Securities Exchange Act Release No. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (SR–CBOE–2006–110) (the ''CBSX Approval Order''). *See also* Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745 (February 1, 2007) (SR–CBOE–2006–110) (the ''CBSX Notice of Filing'').

[9] CBOE Rule 3.32(a) provides, in part: For as long as CBSX LLC operates as a facility of CBOE, no Trading Permit Holder, either alone or together with its Affiliates, at any time, may own, directly or indirectly, of record or beneficially, an aggregate amount of Shares that would result in a greater than twenty percent (20%) Percentage Interest in CBSX LLC (the ''Concentration Limitation'').

In addition, the Certificate of Incorporation of CBOE Holdings, Inc., the owner of CBOE (''CBOE Holdings''), provides that no person (either alone or together with its related persons) may beneficially own more than 20% of the total outstanding shares of CBOE Holdings stock. *See* Article Sixth (b) of the Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc. *See also* Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR–CBOE–2008–88).

[10] ''Voting Shares'' means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners. *See* Section 2.1(a)(28) of the CBSX Operating Agreement.

[11] As noted in Section 3.2 of the CBSX Operating Agreement, it is the intention of the Owners that no other members of CBSX (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the Commission as provided for in Article VI, including Section 6.14 of the CBSX Operating Agreement, or any other provision thereof, or any rights to be acquired by a transferee of those Shares as provided therein.

[12] The CBSX Operating Agreement also provides for Series C Non-Voting Restricted Shares. Such Shares are not entitled to vote on any matter submitted to a vote of the Owners and there are currently no Series C shares outstanding. *See* Section 8.9 of the CBSX Operating Agreement.

[13] Section 6.12(a) of the CBSX Operating Agreement provides that no person (other than CBOE), either alone or together with its Affiliates, may directly or indirectly own an aggregate amount

Continued

contained in the CBSX Operating Agreement and applicable CBOE rules, will remain unchanged after the Transaction except as otherwise described below.

In connection with the Transaction, CBOE proposes to amend and restate the CBSX Operating Agreement to be effective as of the closing of the Transaction. CBOE also proposes to adopt new CBOE Rule 2.50 regarding its policy with respect to NSX. These changes are discussed below.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that each proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,[15] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. Further, the Commission finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,[16] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposed rule change are consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

As noted above, following the Transaction, NSX will be a wholly-owned subsidiary of CBSX. NSX will remain registered as a national securities exchange under Section 6 of the Act,[18] and, accordingly, NSX will remain an SRO. The Commission believes that the ownership of NSX by CBSX would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[19] Though CBSX is not itself an SRO, as a holding company of an SRO, its activities with respect to the operation of NSX must be consistent with, and must not interfere with, the self-regulatory obligations of NSX.

A. CBOE–2011–107

1. Changes To Accommodate CBSX's Ownership of NSX

CBOE's proposed rule change includes several amendments designed to accommodate CBSX's ownership of NSX. These amendments address the fact that CBSX will effectively serve as a holding company for NSX after the Transaction to the extent related to CBSX's control of NSX. The changes also clarify CBSX's rights and responsibilities relating to its role as a holding company of a registered national securities exchange. For example, CBOE's proposal amends Section 1.6 of the CBSX Operating Agreement to reflect CBSX's new purpose to act as a holding company of NSX (in addition to its current purpose to act as a trading market for securities other than options as a facility of CBOE). The proposal also amends several provisions in the CBSX Operating Agreement to clarify that certain references to CBSX include its subsidiaries, including NSX.[20]

In addition, the proposal amends Section 6.12 of the CBSX Operating Agreement to provide that the Ownership Concentration Limitation described in that section, which currently carves out CBOE (because CBOE owns greater than 20% of CBSX) does not apply to CBOE Holdings as well (because CBOE Holdings indirectly owns CBOE). It also expands the applicability of the Concentration Limitation to persons and the broader category of their ''Related Persons''[21] rather than to persons and their ''Affiliates.''[22] The proposal also amends Section 6.12(c) and (e) of the CBSX Operating Agreement to impose on NSX equity trading permit holders the Ownership Concentration Limitation prohibitions described in those paragraphs, which are currently only imposed on CBOE Trading Permit Holders. This change recognizes CBSX's new ownership of NSX and is intended to guard against members of NSX obtaining an ownership stake in CBSX that could potentially be used to influence the performance by NSX of regulatory authority over such members or others. The Commission finds that these changes, which are necessary to reflect the change in ownership of NSX after the Transaction, are consistent with the Act.

The proposal makes similar amendments to Section 8.10 of the CBSX Operating Agreement to expand applicability of the voting restriction described in that section to persons and their Related Persons and to provide that if any person, not just a CBOE Trading Permit Holder, exceeds the Concentration Limitation set forth in Section 6.12 of the CBSX Operating Agreement, then the Owner and its Related Persons will have no voting rights with respect to the shares in excess of such limitation unless it satisfies certain requirements set forth in proposed Section 8.10(b) through (d) of the CBSX Operating Agreement. The proposed rule change also extends the applicability of the voting restriction in Section 8.10 of the CBSX Operating Agreement to cover voting agreements, plans, and arrangements.

Further, the proposal amends Section 9.15(a)(9) of the CBSX Operating Agreement to clarify that with respect to the sale of material assets or ownership interests that requires approval pursuant to Section 9.15, ''material assets or ownership interests'' includes subsidiaries of CBSX. In addition, the proposed rule change adds Section 15.19 to the CBSX Operating Agreement

of Shares that would result in a greater than 20% Percentage Interest in CBSX. In addition, Section 8.10 provides that if an Owner of Series B Voting Shares that is also a CBOE member owns more than 20% of the outstanding Voting Shares (''Excess Shares''), alone or together with any Affiliate, such Owner will have no voting rights with respect to the Excess Shares.

[14] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(1).

[16] 15 U.S.C. 78f(b)(3).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(8).

[20] *See, e.g.,* Sections 1.6 and 9.15(a)(9) and (10) of the CBSX Operating Agreement.

[21] *See* Section 2.1(a)(23) of the CBSX Operating Agreement defining ''Related Person.''

[22] Section 2.1(a)(1) of the CBSX Operating Agreement defines ''Affiliate'' as, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person. As used in this definition, ''control'' means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract or otherwise with respect to such person.

to obligate CBSX, when voting as NSX's sole shareholder in an election of the NSX board of directors, to vote in favor of ETP Holder Directors (a certain class of directors defined in the NSX Bylaws that are intended to provide NSX members with fair representation in the governance of NSX consistent with the Act) that were nominated in accordance with the procedures set forth in NSX's governing documents.

2. Preservation of the Self-Regulatory Function of NSX

After the Transaction, NSX would become a subsidiary of CBSX. Although CBSX is not an SRO and, therefore, does not itself have self-regulatory functions, its activities with respect to the operation of NSX must be consistent with, and not interfere with, NSX's self-regulatory obligations. To address this concern, the proposal adds various provisions to the CBSX Operating Agreement that are designed to protect the independence of the self-regulatory function of NSX and to clarify NSX's rights with respect to CBSX.

For example, the proposed rule change adds Section 5.7(b) to the CBSX Operating Agreement, which, among other things:

- Requires CBSX Owners, the CBSX board of directors, CBSX officers, and CBSX employees (for so long as CBSX controls NSX and to the extent related to the activities of NSX) to give due regard to the preservation of the independence of the self-regulatory function of NSX and to NSX's obligations under the Act;
- Prohibits CBSX Owners, the CBSX board of directors, CBSX officers, and CBSX employees from taking any actions that would interfere with the effectuation of any decisions by the NSX board of directors relating to NSX's regulatory functions, including disciplinary matters, or with NSX's ability to carry out its responsibilities under the Act; and
- Requires CBSX to comply with federal securities laws and the rules and regulations thereunder, and requires CBSX and its officers, directors, employees, and agents to cooperate with the Commission and NSX pursuant to and to the extent of their regulatory authority.

In addition, the proposed rule amends Section 6.15(a) of the CBSX Operating Agreement to reflect the acquisition by CBSX of the NSX SRO and to ensure access by NSX to the Owners of CBSX that is necessary for NSX to perform its responsibilities as an SRO.[23] Specifically, the revisions:

- Clarify that the Owners acknowledge that the books, records, premises, officers, directors, agents, and employees of the Owners will be deemed to be the books, records, premises, officers, directors, agents, and employees *of CBOE* for the purpose of and subject to oversight pursuant to the Act, but only to the extent they are related to the CBSX Trading Facility; and
- Add a provision in which the Owners acknowledge that the books, records, premises, officers, directors, agents, and employees of the Owners will be deemed to be the books, records, premises, officers, directors, agents, and employees *of NSX* for the purpose of and subject to oversight pursuant to the Act, but only to the extent they are related to the activities of NSX.

Similarly, the proposed rule change amends Section 6.15(b) of the CBSX Operating Agreement concerning access by NSX to CBSX personnel and records[24] to add the provision that the books, records, premises, officers, directors, agents, and employees of CBSX will be deemed to be the books, records, premises, officers, directors, agents, and employees *of NSX* for the purpose of and subject to oversight pursuant to the Act, but only to the extent related to the activities of NSX.[25]

The proposal also amends Section 6.15(c) of the CBSX Operating Agreement to provide that CBSX and the Owners and their respective officers, directors, agents, and employees,[26] irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, CBOE, and NSX for the purposes of any suit, action, or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the CBSX Trading Facility or the CBSX's control of NSX, as applicable.

In addition, the proposed rule change amends Sections 9.15(c) and 9.16 of the CBSX Operating Agreement to provide that CBSX directors agree to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the Commission, CBOE, and NSX pursuant to their regulatory authority, as applicable, and the provisions of the CBSX Operating Agreement. The proposal also amends Section 9.15(c) of the CBSX Operating Agreement to provide that CBSX directors will take into consideration whether any actions taken or proposed to be taken as a director for or on behalf of CBSX, or any failure or refusal to act, would constitute interference with CBOE's or NSX's regulatory functions and responsibilities, as applicable, in violation of the CBSX Operating Agreement or the Act.[27] These provisions are designed to foster compliance with the federal securities laws and to emphasize the considerations that are necessary on the part of CBSX's directors to reflect NSX's responsibilities as an SRO.

Additionally, the proposal amends Section 14.1(a) of the CBSX Operating Agreement to provide that, for so long as CBSX controls NSX, before any amendment, alteration, or repeal of any provision of the CBSX Operating Agreement, to the extent related to CBSX's control of NSX, will be effective, such amendment, alteration, or repeal must be submitted to the NSX board of directors, and if CBOE and the NSX board of directors determine that such amendment, alteration, or repeal must be filed with or filed with and approved by the Commission, then such amendment, alteration, or repeal will not become effective until filed with or filed with and approved by the Commission, as the case may be. The proposal also adds a 10-day notice provision for any amendment, alteration, or repeal of the CBSX Operating Agreement made pursuant to Section 14.1(a) to provide CBOE and NSX with sufficient opportunity to review any potential regulatory impacts

[23] Section 6.15(a) of the CBSX Operating Agreement currently provides: ''The Owners acknowledge that to the extent they are related to [CBSX's] activities, the books, records, premises, officers, directors, agents, and employees of the Owners shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act.''

[24] Section 6.15(b) of the CBSX Operating Agreement currently provides: ''The books, records, premises, officers, directors, agents, and employees of [CBSX] shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act.''

[25] CBSX's complete records and books of account must be subject at all times to inspection and examination by CBOE (to the extent related to the CBSX Trading Facility), NSX (to the extent related to CBSX's control of NSX), and the Commission at no additional charge to CBOE, NSX, and the Commission, as applicable. *See* Section 13.2 of the CBSX Operating Agreement.

[26] Revisions to Section 6.15(c) (consent to jurisdiction) and (d) (consent in writing to applicability) of the CBSX Operating Agreement also extend the requirements of these provisions to all agents and employees of CBSX and its Owners, rather than only agents and employees whose principal place of business and residence is outside of the United States.

[27] Interference with respect to the CBSX Trading Facility will be determined by the CBSX board designees of CBOE. *See* Section 9.15(c) of the CBSX Operating Agreement.

of such amendment, alteration, or repeal before it becomes effective.

Further, to ensure unencumbered access to all relevant information, regardless of whether such information is considered ''confidential,'' the proposal amends Section 15.2 of the CBSX Operating Agreement to provide that nothing in the CBSX Operating Agreement will be interpreted to limit or impede the rights of the Commission, CBOE, or NSX to access and examine any Confidential Information (as defined in the CBSX Operating Agreement) pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of an Owner or an officer, director, agent, or employee of an Owner to disclose any Confidential Information to the Commission, CBOE, or NSX. Proposed Section 15.2 of the CBSX Operating Agreement also provides that the obligation of Owners not to disclose Confidential Information described in that section does not apply to CBOE's or NSX's communications with the Commission with respect to the conduct of the CBSX Trading Facility's business or NSX's business, respectively.

3. CBOE Rule 2.50

The CBOE proposed rule change proposes to adopt new CBOE Rule 2.50, which is intended to foster and preserve the self-regulatory function of NSX. Specifically, CBOE Rule 2.50(a) proposes a policy that CBOE, as a controlling owner of CBSX, will not take any action related to NSX's activities that would interfere with NSX's efforts to carry out its self-regulatory obligations under the Act and the rules and regulations thereunder. Additionally, proposed CBOE Rule 2.50(b) provides that CBOE will ''exercise its powers as a partial owner of CBSX to support the fulfillment by NSX of its self-regulatory obligations, including the appropriate allocation by NSX of such financial, technological, technical and personnel resources as may be necessary or appropriate for NSX to meet its obligations under the [Act].'' The purpose of proposed CBOE Rule 2.50(a) is to provide that CBOE will, through its control interest in CBSX and consistent with its relationship with CBSX, work with NSX to establish and maintain adequate and appropriate resources to enable NSX to perform its self-regulatory obligations.

CBOE Rule 2.50 is designed to facilitate NSX's ability to fulfill its self-regulatory obligations and, therefore, is consistent with the Act, including Section 6(b)(1) of the Act,[28] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. Proposed Rule 2.50 represents CBOE's commitment, as a controlling owner of CBSX, to support NSX in the fulfillment of NSX's role as an SRO.

4. CBOE Holdings and Regulated Securities Exchange Subsidiaries

CBOE is wholly-owned by CBOE Holdings, and as discussed above, CBOE owns a controlling interest in CBSX. The CBOE Holdings Certificate of Incorporation contains provisions that are applicable to ''Regulated Securities Exchange Subsidiaries'' of CBOE Holdings, which entities are defined as ''any national securities exchange controlled, directly or indirectly, by [CBOE Holdings], including, but not limited to CBOE.'' [29] Various provisions in the CBOE Holdings Certificate of Incorporation reference ''Regulated Securities Exchange Subsidiary,'' including Articles Sixth (voting and ownership limitations), Eleventh (amendments to the CBOE Holdings Certificate of Incorporation must be submitted to the board of each Regulated Securities Exchange Subsidiary), Twelfth (amendments to the CBOE Holdings Bylaws must be submitted to the board of each Regulated Securities Exchange Subsidiary), Fourteenth (submission to jurisdiction arising out of or relating to Regulated Securities Exchange Subsidiaries' activities), Fifteenth (confidential information of Regulated Securities Exchange Subsidiaries and access to CBOE Holdings' books and records by Regulated Securities Exchange Subsidiaries), and Sixteenth (cooperation with the SEC and each Regulated Securities Exchange Subsidiary, consent to applicability of various provisions, due regard to preservation of regulatory independence, and consideration of effect of actions on each Regulated Securities Exchange Subsidiary). NSX, to the extent it is indirectly controlled by CBOE Holdings by virtue of CBOE Holdings' control of CBOE and CBOE's controlling interest in CBSX, which in turn will wholly-own NSX after the consummation of the Transaction, would qualify as a ''Regulated Securities Exchange Subsidiary.''

5. Facility of CBOE

The proposed rule change amends various provisions to clarify that the operations of CBSX that relate to the CBSX Stock Exchange trading facility are a facility of CBOE under the Act, while the aspect of CBSX that relates to its control of NSX will not be a ''facility'' of CBOE. For example, the proposal amends Section 1.7 of the CBSX Operating Agreement to clarify that the CBSX Trading Facility (and not CBSX to the extent it will act as a holding company for NSX) is a facility of CBOE under the Act, and therefore the CBSX Trading Facility will be subject to self-regulation by CBOE, with oversight by the Commission.[30]

6. Additional Changes

Finally, the proposed rule change makes several non-substantive technical and conforming changes throughout the CBSX Operating Agreement, including: updating the name and date of the CBSX Operating Agreement; updating the current Owners and their current percentage interests and CBSX shares owned; [31] replacing references to CBOE members with CBOE trading permit holders; [32] updating the table of contents and section references; and adding new defined terms and renumbering the defined terms as necessary.[33] In connection with the updates to reflect the current Owners, the proposed rule change amends the definition of ''Super Majority of the Owners'' to mean, subject to the regulatory requirements described in Section 1.8 of the CBSX Operating Agreement, the affirmative vote of both (i) all of the Owners of the Series A Voting Shares at the time, and (ii) Owners of the Series B Voting Shares who then retain ownership of Series B Voting Shares and represent at least a twenty (20%) percentage interest in CBSX, which more accurately corresponds to CBSX's current ownership structure.[34] The Commission finds these non-substantive changes to be consistent with the Act as they are

[28] 15 U.S.C. 78f(b)(1).

[29] *See* CBOE Holdings Certificate of Incorporation Article Fifth (a)(xi).

[30] *See also* Sections 1.8, 6.2(e), 6.15(c) and (d), 9.2(d), 9.15(a)(14) and 14.1(a) for additional clarifications.

[31] *See* Section 3.2(d), signature page, and Exhibit A to the CBSX Operating Agreement.

[32] *See* Sections 6.12(c) and (e) and 8.10 of the CBSX Operating Agreement.

[33] *See* Section 2.1 of the CBSX Operating Agreement.

[34] *See* Section 2.1(a)(26). This change is consistent with the original structure of CBSX under which a super majority could be obtained with an affirmative vote of CBOE and two initial owners, who all initially had ten (10%) percentage interests in CBSX.

necessary to reflect the acquisition by CBSX of NSX following the Transaction.

B. NSX–2011–14

NSX proposes to amend its Certificate of Incorporation and By-Laws to reflect and address NSX's proposed new ownership pursuant to which NSX will become wholly-owned by CBSX following the Transaction. In addition, NSX is making several other changes to its governing documents that are not directly related to the Transaction to update and enhance the governing documents and generally make them consistent with parallel provisions contained in the governing documents of other SROs. Certain provisions of the current NSX By-Laws that are historic in nature are also proposed to be deleted as no longer applicable.

Except as described below, NSX's governing documents, rules, and manner of operation, including restrictions on ownership and transfer, registration as a national securities exchange under Section 6 of the Act, and the continuance of NSX as an SRO [35] will remain unchanged.[36]

In addition, the NSX proposal also contains the CBSX Operating Agreement, as revised in the contemporaneous rule filing CBOE–2011–107 and as described above, since provisions in the CBSX Operating Agreement are relevant to NSX's structure and operations. The proposed amendments to the NSX governing documents and the CBSX Operating Agreement are intended to provide NSX with the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. The proposed amendments also modernize and enhance the ownership and voting limitations in order to guard against undue influence over or interference with the NSX's regulatory functions and fulfillment of its regulatory obligations under the Act.

The proposed Amended and Restated NSX Certificate of Incorporation (the ''A&R Certificate'') and Second Amended and Restated NSX By-Laws (the ''A&R By-Laws''), amended as described below, and NSX Rules (which are proposed to remain unchanged) would continue to govern the activities of NSX. These revised documents reflect NSX's status as a wholly-owned subsidiary of CBSX, continued management of NSX by the NSX Board of Directors (''NSX Board'') and designated officers, and the NSX's continuing self-regulatory responsibilities pursuant to NSX's registration under Section 6 of the Act.

Currently, the NSX Board consists of thirteen director positions, of which seven are Independent, three are ETP Holder, two are At Large, and one is the NSX Chief Executive Officer. The Transaction contemplates that all current Exchange directors and committee members, including the Chief Executive Officer, will resign from the Board and committees, as applicable, effective upon closing. At such time, the vacancies on the Board and committees of the Board will be filled in accordance with applicable procedures contained in the A&R By-Laws. Candidates with the necessary qualifications will be appointed in accordance with Sections 3 or 5, as applicable, of the A&R By-Laws to fulfill the expired portion of any vacancies created by the resignation. Thereafter, directors and committee members will be nominated and elected in accordance with the A&R By-Laws.

1. Amended and Restated Certificate of Incorporation of NSX

Under the proposed rule change, the requirement that NSX be at all times wholly-owned by NSX Holdings is proposed to be changed to allow for the consummation of the Transaction and acquisition of all of the outstanding NSX stock by CBSX. To make clear that NSX will be entirely owned by CBSX (regardless of whether outstanding NSX stock is voting or non-voting), the proposed A&R Certificate would be modified in Article IV to provide that, at all times, all of the outstanding stock of NSX shall be owned by CBSX.

In addition, new language is proposed to be added to Articles VII and XI of the NSX Certificate of Incorporation designed to enable NSX Board and the Commission to continue to exercise oversight of NSX. In conformity with similar language in other governing documents of other exchanges,[37] NSX proposes to add a provision to each of Articles VII and XI to make clear that before any amendment to, or repeal of, any provision of the NSX By-Laws and/or Certificate of Incorporation shall be effective, those changes shall be submitted to the NSX Board and, if such amendment or repeal must be filed with or filed with and approved by the Commission, then the proposed changes shall not become effective until filed with or filed with and approved by the Commission.[38] For purposes of clarity regarding Commission approval of NSX proposed rule changes, specific reference to Section 19 of the Act and the rules promulgated thereunder is also introduced to Articles VII and XI.

Finally, consistent with similar provisions in the governing documents of other exchanges,[39] the proposed A&R Certificate in Article V is amended to allow directors (other than ETP Holder Directors) to be removed with or without cause by a majority vote of stockholders. This amendment is intended to promote efficient NSX governance while continuing to protect and preserve the fair representation of ETP Holders through the ETP Holder Director election process contained in NSX's By-Laws.

The Commission believes that the proposed A&R Certificate, as amended to accommodate the Transaction, is designed to facilitate the NSX's ability to fulfill its self-regulatory obligations and are, therefore, consistent with the Act. In particular, the Commission believes the changes are consistent with Section 6(b)(1) of the Act,[40] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

2. Second Amended and Restated By-Laws of NSX

Under the proposed rule change, due to the transfer of ownership of NSX from NSX Holdings to CBSX, references in the NSX By-Laws specific to NSX Holdings are proposed to be replaced with references to CBSX. Specifically, Section 3.2(c) is proposed to be modified to provide that no two or more directors of NSX may be partners, officers, or directors of the same person or be affiliated with the same person, unless such affiliation is with a national securities exchange or CBSX. In addition, Section 10.2 is proposed to be modified to provide that in no event shall members of the CBSX Board who are not also members of the NSX Board,

[35] *See* 15 U.S.C. 78c(a)(26).

[36] *See* Securities Exchange Act Release No. 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR–NSX–2006–03) (Commission order approving NSX's demutualization).

[37] *See, e.g.,* Article 6 of the Certificate of Incorporation of EDGA Exchange, Inc. and Article 9 of the Certificate of Incorporation of C2 Options Exchange, Inc.

[38] *See* A&R Certificate of Incorporation, Articles Seventh and Eleventh.

[39] *See* A&R Certificate of Incorporation, Article Fifth, (b). *See also, e.g.,* Article II, Section 7(a) of the Amended and Restated By-Laws of BATS Exchange, Inc. and Article II, Section 7(a) of the Amended and Restated Bylaws of EDGA Exchange, Inc.

[40] 15 U.S.C. 78f(b)(1).

or any officers, staff, counsel, or advisors of CBSX who are not also officers, staff, counsel, or advisors of NSX (or any committees of NSX), be allowed to participate in any meetings of the NSX Board (or any committee of NSX) pertaining to the self-regulatory function of NSX (including disciplinary matters). These amendments recognize CBSX as direct owner of NSX while preserving a mechanism to prevent undue influence over NSX's self-regulatory functions.

In connection with the ownership of NSX by CBSX, new Section 10.1(b) will provide that, for so long as CBSX controls NSX, NSX shall promptly inform the CBSX board of directors, in writing, in the event that NSX has, or experiences, a deficiency related to its ability to carry out its obligations as a national securities exchange under the Act, including if NSX does not have or is not appropriately allocating such financial, technological, technical, and personnel resources as may be necessary or appropriate for NSX to meet its obligations under the Act. This provision will assist the CBSX board in its oversight of NSX, and will also assist CBOE, pursuant to CBOE Rule 2.50, in CBOE's commitment, as a controlling owner of CBSX, to support NSX in the fulfillment of NSX's role as an SRO.

In addition, in conformity with the board composition provisions of other SROs,[41] certain NSX Board composition changes are proposed in order to streamline and promote the efficiency and effectiveness of NSX Board governance. Specifically, By-Law provisions regarding the number of directors on the NSX Board are proposed to be amended to allow any number between (and including) seven (7) and twenty-five (25). In addition, the requirement that at least 50% of NSX Board members be ''Independent'' Directors is proposed to be replaced with a requirement that at least 50% of NSX Board members be ''Non-Industry'' Directors, at least one of whom must qualify as Independent.[42] The category of ''At Large'' Directors, which under current By-Laws means directors who are not Independent, is eliminated.[43] Finally, the category of CBOE Director, and corresponding provisions discussing CBOE ownership of Class B stock and related Board representation, are proposed to be deleted as obsolete.[44]

As a result, the proposed NSX Board composition after the closing of the Transaction will consist of not fewer than seven (7) and not more than twenty-five (25) directors[45] and at all times shall include the Chief Executive Officer of NSX, at least 50% Non-Industry Directors (at least one of whom shall be an Independent Director), and such number of ETP Holder Directors as is necessary to comprise at least 20% of the NSX Board.[46] For purposes of calculating the percentage of Non-Industry Directors, the Chief Executive Officer of NSX is excluded.[47]

By-Law provisions relating to the terms of office of each type of director are also amended from staggered three-year terms to one-year terms (other than the CEO Director, which individual's term expires upon ceasing to be Exchange Chief Executive Officer).[48] NSX stated that the change to annual from staggered three-year director terms, which is consistent with provisions of other SROs,[49] promotes efficient Exchange governance and effective ETP Holder representation.[50]

With respect to the filling of vacancies on the NSX Board,[51] the A&R By-Laws are proposed to be amended to differentiate the procedure depending on whether the vacancy is of an ETP Holder Director or another type of director. Under current NSX By-Laws, no such distinction is made. NSX stated that it believes a distinction is necessary in order to promote, in the event of a vacancy of an ETP Holder Director, the fair representation of ETP Holders on the NSX Board.[52] For non-ETP Holder Directors, the A&R By-Laws provide, consistent with current Exchange By-Laws, that any vacancy may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists. A director elected to fill a vacancy shall hold office until the next annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation, disqualification, or removal.[53] Regarding the filling of vacancies of ETP Holder Directors, the ETP Holder Director Nominating Committee shall either recommend an individual to the NSX Board to be elected to fill such vacancy or provide a list of recommended individuals to the NSX Board from which the NSX Board shall elect the individual to fill such vacancy. The NSX Board shall elect only individuals recommended by the ETP Holder Director Nominating Committee. The proposed amendments conform to analogous provisions of the governance documents of another exchange.[54]

The Commission finds that the proposed changes regarding the composition of the Board are consistent with the Act, including Section 6(b)(1) of the Act,[55] which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. The Commission notes that the proposed changes are consistent with the board composition provisions of other SROs.[56]

Certain other edits are proposed to the current NSX By-Laws to promote clarity and efficient governance. Such edits generally are intended to conform NSX's governing documents to analogous provisions contained in the governing documents of other exchanges.[57] Specifically, in order to promote fair representation among all ETP Holders,

[41] *See, e.g.,* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc.; Second Amended and Restated By-Laws of CBOE; Amended and Restated By-Laws of BATS Exchange, Inc.; and the Amended and Restated Bylaws of EDGA Exchange, Inc.

[42] *See* A&R By-Laws Section 3.2 (Board composition requirements) and 1.1 (definitions of ''Industry Director'' and ''Non-Industry Director''). *See also e.g.,* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc., Article III, Section 1; Second Amended and Restated Bylaws of the CBOE Article III, Section 1; and the Amended and Restated By-Laws of BATS Exchange, Inc., Article I.

[43] *See* A&R By-Laws Section 1.5 (definitions) and deletions to current By-Laws in Sections 3.2(b) and 3.4(e).

[44] *See* deletions to current By-Laws in Sections 1.5, 3.2(b), 3.3, 3.4(d), 3.5(g) and 3.7.

[45] *See* A&R By-Laws Section 3.2(a).

[46] *See* A&R By-Laws Section 3.2(b). *See also* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc. Article III, Section 3.1; Second Amended and Restated Bylaws of CBOE Section III, Article 3.1; and the Amended and Restated By-Laws of BATS Exchange, Inc., Article III, Section 2.

[47] *See* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc., Article III, Section 3.1; and Second Amended and Restated Bylaws of the CBOE. Section III, Article 3.1.

[48] *See* A&R By-Laws Section 3.4(a) through (e).

[49] *See* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc., Article III, Section 3.1; Second Amended and Restated Bylaws of the CBOE Article III, Section 3.1.

[50] *See* NSX Notice, *supra* note 3, at 76 FR 75589.

[51] *See* A&R By-Laws Section 3.7. *See also* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc., Article III, Section 3.5; Second Amended and Restated Bylaws of the CBOE Section III, Article 3.5; Amended and Restated By-Laws of BATS Exchange, Inc., Article III, Section 6; and Amended and Restated Bylaws of EDGA Exchange, Inc., Article III, Section 6.

[52] *See* NSX Notice, *supra* note 3, at 76 FR 75589.

[53] *See* A&R By-Laws Section 3.7(a)(i).

[54] *See* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc., Article III, Section 3.5.

[55] 15 U.S.C. 78f(b)(1).

[56] *See, e.g.,* Third Amended and Restated Bylaws of the C2 Options Exchange, Inc.; Second Amended and Restated By-Laws of CBOE; Amended and Restated By-Laws of BATS Exchange, Inc.; and Amended and Restated Bylaws of EDGA Exchange, Inc.

[57] *See* A&R By-Laws Section 3.5(d) and (e). *See also, e.g.,* Amended and Restated By-Laws of BATS Exchange, Inc., Article III, Section 4.

A&R By-Laws Section 3.5(d) is proposed to be amended to provide that no ETP Holder, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such ETP Holder, together with its affiliates, in excess of fifty percent (50%) limitation shall be disregarded. Similarly, in order to promote fair representation among all ETP Holders, in an election among ETP Holders of candidates for ETP Holder Director, A&R By-Laws Section 3.5(e) is proposed to be amended to provide that any vote must be cast for a person duly nominated on the list of candidates and that no ETP Holder, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such ETP Holder, together with its affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. These provisions are intended to guard against the exercise of undue influence in the selection of ETP Holder directors.

In addition, the A&R By-Laws have been revised to include a fuller description of the composition and authority of Exchange committees.[58] The description of the Executive Committee, which has authority to act on behalf of the full NSX Board under certain circumstances, is amended to clarify that the composition requirements of such committee must mirror the requirements applicable to the full Board.[59] Regarding other Exchange committees, descriptions of the duties and composition requirements are included for each of the ETP Holder Director Nominating Committee, the Executive Compensation Committee, the Audit Committee, the Governance and Nominating Committee, the Appeals Committee, and the Business Conduct Committee. Reference to a Securities Committee was deleted.

Consistent with analogous provisions contained in the governing documents of other exchanges, the procedures for amendments to NSX's By-Laws are proposed to be amended to provide for NSX Board review and, as necessary, Commission approval, prior to the effectiveness of any amendments to the Exchange's By-Laws.[60]

Consistent with the proposed edits to the A&R Certificate and similar provisions in the governing documents of other exchanges,[61] the proposed A&R By-Laws are further proposed to be modified to allow directors (other than ETP Holder Directors) to be removed with or without cause by a majority vote of stockholders. This amendment, consistent with a parallel proposed amendment to the NSX A&R Certificate, is intended to promote efficient Exchange governance while protecting the fair representation of ETP Holders through the ETP Holder Director election process as set forth in the A&R By-Laws.

In addition, to clarify that the confidentiality provisions of Section 10.3 may not be interpreted to limit Commission jurisdiction over NSX books and records, a clarifying statement is proposed to be added to A&R By-Laws Section 10.3 to provide that nothing in Section 10.3 shall be interpreted as to limit or impede the rights of the Commission to access and examine Exchange confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees, or agents of NSX to disclose such confidential information to the Commission.[62]

Finally, the proposed A&R By-Laws contain several other non-substantive, conforming edits to the A&R By-Laws that are consistent with the principles discussed above, as well as the Act and the rules promulgated thereunder.[63]

C. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[64] for approving each of the proposed rule changes prior to the 30th day after the date of publication of notice in the **Federal Register**. Both the NSX Notice and the CBOE Notice were published in the **Federal Register** on December 2, 2011. Pursuant to Section 19(b)(2)(C)(iii) of the Act,[65] the Commission may not approve a proposed rule change earlier than 30 days after the date of publication thereof unless the Commission finds good cause for so doing. In the case of the CBOE and NSX proposals, the 30th day occurs in three days and falls on a non-business day (a Sunday). Further, the comment period on each proposal has closed, and the Commission has not received comment on either proposal. In light of the Commission's findings that the proposals are consistent with the Act, the Commission believes that good cause exists to accelerate approval of each proposal by a few days in order to accommodate the closing of the Transaction in calendar year 2011.

IV. Conclusion

For the foregoing reasons, the Commission finds that each of the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[66] that the proposed rule changes (SR–CBOE–2011–107 and SR–NSX–2011–14) be and hereby are approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33826 Filed 1–4–12; 8:45 am]

BILLING CODE 8011–01–P

[58] *See* A&R By-Laws Sections 5.5 through 5.13. *See also, e.g.,* Amended and Restated By-Laws of BATS Exchange, Inc., Article V, Section 6, and Article VI, Section 2.

[59] *See* A&R By-Laws Section 5.5(a), which provides, in part, that the Executive Committee at all times shall include the Chief Executive Officer of NSX, at least 50% Non-Industry Directors, at least one Independent Director and such number of ETP Holder Directors as is necessary to comprise at least 20% of the Executive Committee. *See also, e.g.,* Amended and Restated By-Laws of BATS Exchange, Inc., Article V, Section 6(e).

[60] *See* A&R By-Laws Section 8.1. *See also, e.g.,* Amended and Restated By-Laws of BATS Exchange, Inc., Article IX, Section 1.

[61] *See* A&R By-Laws Section 3.8. *See also, e.g.,* Article II, Section 7(a) of the Amended and Restated By-Laws of BATS Exchange, Inc.; and Article II, Section 7(a) of the Amended and Restated Bylaws of EDGA Exchange, Inc.

[62] *See* A&R By-Laws Section 10.3.

[63] Non-substantive, conforming edits to the A&R By-Laws are reflected in the following Sections of the A&R By-Laws: 3.2(d) (clarifying that directors may not serve if subject to statutory disqualification as such term is defined in the Act); 3.7(c) (providing that any grace periods for re-qualification of a director must be for only a reasonable length of time); 3.17(clarifying that NSX Board authority to interpret Exchange By-Laws remains subject to the Act); 5.2(clarifying that the composition requirements set forth in description of each committee in Article V control, and that responsibility for maintenance of committee composition in connection with new committee appointments resides with the Chairman); 5.6 (specifying that the Regulatory Oversight Committee shall at all times be comprised entirely of Non-Industry Directors); and 6.3 (clarifying that officer disqualification will terminate an officer's term of office). Relevant definitions are also added to Section 1.1.

[64] 15 U.S.C. 78s(b)(2).

[65] 15 U.S.C. 78s(b)(2)(C)(iii).

[66] 15 U.S.C. 78s(b)(2).

[67] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66068; File No. SR–NSCC–2011–10]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Rules Relating To the Creation of a Service To Provide Post-Trade Information

December 29, 2011.

I. Introduction

On November 7, 2011, The National Securities Clearing Corporation (''NSCC'') filed proposed rule change SR–NSCC–2011–10 with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on November 25, 2011.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

NSCC is creating an optional service for NSCC members, ''Trade Risk Pro'' or ''DTCC Trade Risk Pro,'' which will enable members to monitor intraday trading activity of their organizations, their correspondent firms, or both through review of post-trade data. An effective risk management structure provides for multiple check points, including pre-trade controls and post-trade surveillance. Industry participants have indicated to NSCC that pre-trade monitoring as a stand-alone risk management tool may not provide adequate protection for firms or against systemic risk. For example, many orders are never actually executed and thus a pre-trade filter could overestimate potential positions or could generate false positives if not combined with information about what orders are actually executed. In addition, clearing firms only see their correspondents' orders that are routed through the clearing firm's trading desks or through the firm's order entry systems. Orders sent directly to the market can bypass pretrade controls. Trade Risk Pro will provide NSCC's members with a method to monitor clearing activity in their accounts and to set parameters that will enable them to monitor exposure.

As approved, the service will be available to NSCC members on a voluntary basis to provide those members electing to participate in the service with: (1) Post-trade data relating to unsettled equity and fixed income securities trades for a given day that have been compared or recorded through NSCC's trade capture mechanisms on that day (''RP Trade Date Data'') and (2) other information based upon data the participating member may itself provide at start of or throughout the day (''RP Member-provided Data''), as provided in NSCC's Rules and Procedures governing the proposed service (RP Trade Date Data and RP Member-provided Data shall collectively be referred to as ''RP Transaction Data''). This will include allowing members the ability to input or load trade information from prior days into the system to supplement their view of overall risk exposure. As such, the Trade Risk Pro service will offer an industry-wide post-trade reporting system that will allow members to monitor their U.S. equity and fixed-income trading exposure.

Overview of the Trade Risk Pro Service

Through Trade Risk Pro, NSCC will utilize market and other information to report post-trade activity to participating members. Such reporting will incorporate RP Trade Date Data from transactions in equity and municipal and corporate debt securities after such transactions have: (1) Passed through the NSCC's edit checks and not been pended or rejected and (2) been recorded or compared through NSCC's Universal Trade Capture and/or Real-Time Trade Matching trade capture and comparison systems. In addition, Trade Risk Pro will allow participating members to input or load start of day and intraday positions (*i.e.,* RP Member-provided Data) to allow members to view their organization's (or one or more correspondent's) aggregate open positions in securities cleared through NSCC. Within Trade Risk Pro, members will be able to create ''Risk Entities'' to track activity for specific correspondents and clients as well as their own trading desks and to define the rules for the aggregation of trade data, to set parameters on open positions allowable for each Risk Entity, and to receive alerts for the display of breaches or near breaches of the parameters.[3] Trade Risk Pro will provide members with a screen-based view of their trade data residing in Trade Risk Pro for a given day aggregated and organized according to parameters set by the member. Displays provided to participating members will offer the option to view aggregate and net value, to view share exposure across markets and other liquidity destinations, and to see exposure at the CUSIP and individual trade levels. In conformance with NSCC's Rule 49 (Release of Clearing Data and Clearing Fund Data), each member will only be able to view information with respect to its own clearing account(s). Trade Risk Pro will be a reporting service only and any action taken by a member as a result of any alert, parameter breach, or other information associated with the service will be at the discretion of the member and not either in whole or part by NSCC.

NSCC will create a new Rule 54 (Trade Risk Pro) and Procedure XVII (Trade Risk Pro) to reflect the proposed rule changes described below. The new rule change also will amend Rule 58 (Limitations of Liability) and will update Rule 1 (Definitions) to include definitions for RP Trade Data, RP Member-provided Data, and RP Transaction Data, as described more fully below.

1. Establishing and Maintaining Risk Entities and Limits

As an initial step in using the Trade Risk Pro service, members will be required to establish Risk Entities (*e.g.,* trading activity of a single desk, a correspondent, single or multiple NSCC clearing number(s), or a combination of entities). Trade Risk Pro will provide members with the ability to create Risk Entities through the defining and updating of the data structure and relationships for the entities to which they assign a parameter or risk limit. The Risk Entity definitions entered by members will drive position calculations and displays in Trade Risk Pro. Trade Risk Pro will provide members with a facility to set share and dollar limits with respect to each Risk Entity at a gross and net level, and it may provide for additional limits as NSCC may determine from time to time are appropriate.

Through the use of trade arrays, each member may define the Risk Entities so that only trades that the member intends to belong to that Risk Entity are included. For each trade, relevant data elements to create a trade array may include: (1) The member's account number(s), (2) the executing broker, (3) the submitting market or firm, and (4) other categories as allowed by NSCC

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 65788 (November 18, 2011), 76 FR 72741 (November 25, 2011).

[3] Members will be able to input such limits into the Trade Risk Pro interface in order to receive system alerts in the event of a breach; however, these limits will not trigger a block by NSCC on any activity processed through NSCC's clearance and settlement systems.

from time to time. Use of these elements will create an array so that each transaction will be assigned by virtue of the array to one or more Risk Entities. Users can assign multiple trade arrays to a single Risk Entity.

Once implemented, updates and changes made to Risk Entities by the member will take effect overnight with a cut-off time designated by NSCC from time to time.[4] Although Trade Risk Pro will prohibit double counting of trades within the same Risk Entity, it is possible that two separate Risk Entities may contain defined elements as specified by the member that cause a specific trade to be included into both Risk Entities.

2. Limit Monitoring

Trade Risk Pro will aggregate and make available position information for purposes of the member's limit monitoring. The aggregate data will be the sum of RP Member-provided data and RP Trade Date Data with the aggregated data defined as RP Transaction Data in NSCC's Rules and Procedures. RP Trade Date Data, RP Member-provided Data, and other relevant data will be aggregated and sorted, and the data will then be displayed to the member. The display may include shares and values on a gross or net basis or any other total aggregation and sorting methods as NSCC may from time to time make available to members. RP Trade Date Data will be carried at contract amount unless another pricing method is implemented by NSCC. RP Member-provided Data will be priced according to information provided by the member.

Intraday allocations in the settlement system will not be taken into consideration because they are not fully effective until money settlement completes (*i.e.,* after the day cycle). The totals will be compared to the parameters set by the members, and the members will be alerted to breaches based upon their set parameters. The alerts may take the form of visual screen changes or other notification methods. The service will also provide updated information when the alert is resolved (*e.g.,* when the Risk Entity is within the relevant limit as a result of an offsetting transaction reducing the position or the participant raises the limit for a Risk Entity). Information such as alert history, members' Risk Entity definitions, end of day positions, and other data that NSCC provides from time to time will be supplied to members in an end of day report.

3. No Effect on Trade Guaranty and Other Considerations

The rule change will provide that any reports and data supplied to members through Trade Risk Pro is not intended to impact the timing or status of the guaranty of any transaction in CNS or Balance Order Securities. In addition, the issuance of information or data through Trade Risk Pro to a member or the lack of the issuance of information will not of itself indicate or have any bearing on the status of any trade including, but not limited to, as compared, locked-in, validated, guaranteed, or not guaranteed.

4. Limitation of Liability

Trade Risk Pro provides members with a facility to review and monitor trade activity in a manner they select, including providing members with the ability to populate the service (but not limited to the ability to input or load positions), define Risk Entities and set limits, and receive alerts and position data of their choosing. Since NSCC is not the originator of information made available through Trade Risk Pro, NSCC will make clear that it is not responsible for the completeness or accuracy of Trade Date Data or other information or data which it receives from members or third parties used in offering the Trade Risk Pro service, for information or data that is received and compared or recorded by NSCC, or for any errors, omissions, or delays which may occur in the transmission of such data or information. In addition, because not all transactions are submitted to NSCC on a real-time basis, NSCC can only provide members using the service with Trade Date Data as it becomes compared or recorded. Accordingly, members should be aware that such Trade Date Data may not be complete.

5. Indemnification

Since each member may use the information for purposes of its own discretion, the rule change will provide that any member participating in Trade Risk Pro shall indemnify NSCC and any or all of its employees, officers, directors, shareholders, agents, and participants who may sustain any loss, liability or expense as a result of a third party claim related to any act or omission of the member made in reliance upon data or information transmitted through Trade Risk Pro by NSCC to the member.

6. Implementation Time Frame

NSCC will implement the above changes during the first quarter of 2012 or soon thereafter, with the actual implementation date announced to members through an Important Notice.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[5] The Commission believes that by providing its members with a mechanism to their monitor post-trade activity on an intraday basis, the proposed rule change should enhance the risk management ability of those members using the service. By providing for enhanced risk management, the proposed rule change should help remove impediments to and perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions.

Accordingly, for the reasons stated above the Commission believes that the proposed rule change is consistent with NSCC's obligation under Section 17A of the Exchange Act and the rules and regulations thereunder.[6]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2011–10) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33825 Filed 1–4–12; 8:45 am]

BILLING CODE 8011–01–P

[4] Post-implementation of Trade Risk Pro, NSCC may eventually at its discretion provide for real-time updates.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster Number VT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA—4022—DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 09/02/2011.

Effective Date: 12/22/2011.

Physical Loan Application Deadline Date: 12/15/2011.

EIDL Loan Application Deadline Date: 06/01/2012.

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 President's major disaster declaration for the State of Vermont, dated 09/01/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/15/2011.

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. 2011–33831 Filed 1–4–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12909 and #12910]

Virginia Disaster Number VA–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4042–DR), dated 11/04/2011.

Incident: Earthquake.

Incident Period: 08/23/2011 through 10/25/2011.

Effective Date: 12/21/2011.

Physical Loan Application Deadline Date: 03/05/2012.

EIDL Loan Application Deadline Date: 08/06/2012.

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 President's major disaster declaration for the Commonwealth of Virginia, dated 11/04/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 03/05/2012.

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. 2011–33839 Filed 1–4–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12976 and #12977]

Alaska Disaster # AK–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4050–DR), dated 12/22/2011.

Incident: Severe Winter Storms and Flooding.

Incident Period: 11/08/2011 through 11/10/2011

Effective Date: 12/22/2011.

Physical Loan Application Deadline Date: 02/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/24/2012.

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 President's major disaster declaration on 12/22/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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: Bering Strait REAA, Lower Kuskokwim REAA, Lower Yukon REAA, North Slope Borough, Southwest Region REAA.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12976B and for economic injury is 12977B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–33837 Filed 1–4–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7714]

Department of State Advisory Committee on Private International Law: Notice of Renewal of Charter

The Charter of the Department of State's Advisory Committee on Private International Law has been renewed, effective for a two-year period. Pursuant to the Federal Advisory Committee Act, notification of the renewal was provided to the Senate Foreign Relations Committee, the House Foreign Affairs Committee, and the Library of Congress on December 16, 2011. The Advisory Committee assists the State Department to monitor domestic and international developments in private international law; provides a means for state, local and private sector viewpoints to be made available to the Department; and provides information to assist in the development of positions for efforts to harmonize or negotiate uniform rules of private law at the international level through model national laws, legal guidelines, treaties, and other means.

The Advisory Committee focuses on work undertaken or proposed in various international bodies, including but not limited to the Hague Conference on Private International Law; the United Nations Commission on International Trade Law (UNCITRAL), the International Institute for the Unification of Private Law (UNIDROIT), and the Organization of American States (OAS).

Topics considered by the Advisory Committee have included, for example: jurisdiction and enforcement of foreign judgments; party choice of forum; arbitration rules; enforcement of foreign arbitral awards; the protection of minors; inter-country adoption; child abduction; cross-border insolvency; electronic commerce; secured finance; carriage of goods by sea and by other modes of transportation; cross-border securities transactions; online dispute resolution; international leasing and franchising; and other topics of current interest in private law as they arise.

Advisory Committee meetings are open to the public, and participation by the public is encouraged. Interested persons, organizations, academic centers and others can participate in all aspects of the Committee's work. Notices of meetings are published in the **Federal Register** at least 15 calendar days prior to the meeting date, unless circumstances require that the meeting be held with a shorter notice period. Interested parties can obtain additional information from the Office of the Assistant Legal Adviser for Private International Law (L/PIL), Department of State, at (202) 776–8420, fax 776–8482, or by email to Tricia Smeltzer at *SmeltzerTK@State.gov.*

Dated: December 23, 2011.

Harold S. Burman,

Executive Director, Department of State Advisory, Committee on Private International Law.

[FR Doc. 2011–33830 Filed 1–4–12; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Notice of Limitation on Claims Against a Proposed Transportation Project

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA, FTA and other agencies.

SUMMARY: This notice announces final environmental actions taken by FHWA, FTA, and other agencies that are final within the meaning of Federal transportation law. The actions relate to the Interstate 5 Columbia River Crossing Project in Clark County, Washington and Multnomah County, Oregon.

DATES: By this notice, FHWA and FTA are advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of the Federal agency actions announced herein for the listed transportation project will be barred unless the claim is filed on or before July 3, 2012.

FOR FURTHER INFORMATION CONTACT: John McAvoy, Major Project Manager, Federal Highway Administration, Western Federal Lands Highway Division, 610 E. Fifth Street, Vancouver, WA 98661; telephone: (360) 619–7591; and email: *john.mcavoy@dot.gov*, or Terence Plaskon, Environmental Protection Specialist, Office of Planning and the Environment, FTA; telephone: (202) 366–0442; and email: *terence.plaskon@dot.gov.* FHWA and FTA headquarters are located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA, FTA and other agencies have taken final agency actions by issuing licenses, permits, and approvals for the transportation project in the States of Oregon and Washington. *Federal Lead Agencies:* Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). *Project Sponsors:* Oregon and Washington Departments of Transportation (ODOT, WSDOT), Southwest Washington Regional Transportation Council (RTC), Metro, Clark County Public Transportation Benefit Area (C–TRAN), and Tri-County Metropolitan Transportation District (TriMet). *Project Description:* The project is a bridge, transit, highway, and bicycle and pedestrian improvement project, consisting of a new river crossing over the Columbia River, improvements to highway interchanges and the local street network, bicycle and pedestrian improvements, and an extension of light rail from the Expo Center in Portland (OR) to Clark College in Vancouver (WA). The actions by the Federal and other agencies on this project, as well as the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project published in the **Federal Register** on September 23, 2011, and in the Record of Decision issued on December 7, 2011. The FEIS and ROD are available by contacting FHWA at the address above or can be downloaded from the project Web site at *www.columbiarivercrossing.org.*

This notice applies to all FHWA, FTA, and other agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to those arising under the following laws, as amended:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109]; the Federal transit statutes [49 U.S.C. Chapter 53].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c–2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)); American Indian Religious Freedom Act [42 U.S.C. 1996); Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 [Section 404, Section 401, Section 319]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4–4601–11]; Safe Drinking Water Act [42 U.S.C. 300f *et seq.*]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4129].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898,

Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.) Nothing in this notice creates a cause of action under these executive orders.

Issued on: December 29, 2011.

John McAvoy,

FHWA Major Project Manager, Vancouver, WA.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2011–33784 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0300]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-two individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective January 5, 2012. The exemptions expire on January 5, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On November 16, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty individuals and requested comments from the public (76 FR 71112). The public comment period closed on December 16, 2011, and no comments were received.

FMCSA has evaluated the eligibility of the twenty applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Two individuals, Mr. Matthew J. Cipolloni (NJ) and Mr. Michael K. Schulist (MI) were both published in a notice of comments published on October 17, 2011 (76 FR 64165). They were both granted exemptions on December 19, 2011 but their names were inadvertently omitted from the Notice of Final Disposition published on that date (76 FR 78718) and they are now included in this notice.

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-two applicants have had ITDM over a range of 1 to 23 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the November 16, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the

applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the twenty-two exemption applications, FMCSA exempts, George T. Beard (VA), Gary L. Breitenbach (SC), Matthew J. Cipolloni (NJ), Matthew G. Denisov (NE), Marlin L. Enquist (SD), Steven W. Gerling (IA), Jackie D. Greenlee (MO), Justin W. Jackson (OK), Edward L. Keith (IL), David T. Kylander (MO), Eugene J. Nowicki (MI), Jonathan R. Oskin (PA), Kevin A. Perdue (MD), Michael E. Pleak (IN), Sarah M. Powell (NM), Michael K. Schulist (MI), Christopher C. Stephenson (KS), Richard F. VanPelt (NY), Michael A. Villareal (AZ), Richard L. White (MS), Jon W. Wood (MN) and Paul A. Wright (NY) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 22, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33777 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0367]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from seventeen individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The seventeen individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3) which applies to drivers of CMVs in

interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Randall T. Buffkin

Mr. Buffkin, age 50, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Buffkin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Buffkin meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from North Carolina.

Gary L. Camden

Mr. Camden, 58, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Camden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Camden meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Loren A. Cox

Mr. Cox, 53, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cox meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Dennis D. Dingman

Mr. Dingman, 63, has had ITDM since 2001. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dingman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dingman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado.

Daryl F. Gilbertson

Mr. Gilbertson, 34, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gilbertson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gilbertson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Alfred Gutierrez, II

Mr. Gutierrez, 36, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gutierrez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gutierrez meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Matthew D. Hulse

Mr. Hulse, 42, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hulse understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hulse meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Jeremy L. Igert

Mr. Igert, 35, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Igert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Igert meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Neil E. Karvonen

Mr. Karvonen, 24, has had ITDM since 1994. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the

last 5 years. His endocrinologist certifies that Mr. Karvonen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Karvonen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Damon A. Kruger

Mr. Kruger, 32, has had ITDM since 1993. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kruger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kruger meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Bryan R. Lee

Mr. Lee, 39, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lee meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Earl T. Morton

Mr. Morton, 58, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morton meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Virginia.

Richard A. Norstebon

Mr. Norstebon, 54, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Norstebon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Norstebon meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Donald J. Olbinski

Mr. Olbinski, 58, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olbinski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olbinski meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Kevin E. Risley

Mr. Risley, 50, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Risley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Risley meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Steven L. Schmenk

Mr. Schmenk, 54, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schmenk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schmenk meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Benny L. Westbrooks

Mr. Westbrooks, 60, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Westbrooks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Westbrooks meets the vision requirements of 49 CFR 391.41(b)(10). His opthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of

business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: December 22, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33786 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0301]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt eighteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective January 5, 2012. The exemptions expire on January 5, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On November 21, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from eighteen individuals and requested comments from the public (76 FR 72031). The public comment period closed on December 21, 2011, and no comments were received.

FMCSA has evaluated the eligibility of the eighteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These eighteen applicants have had ITDM over a range of 1 to 31 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related

complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the November 21, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received two comments in this proceeding. The comments were considered and discussed below.

Laura J. Krol of the Pennsylvania Department of Transportation has reviewed the driving histories of Gerald R. Curran, Shawn K. Fleming and Kenneth B. Pratt and supports granting them waivers.

Michael R. Simmons of Hoenwald, Tennessee expressed his disappointment that he cannot obtain a Federal waiver, as he is an intrastate driver.

In response to this comment, FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the eighteen exemption applications, FMCSA exempts, Mark A. Aspden (MA), Rodney C. Backus (NY), Peter A. Breister (WI), Gerald R. Curran (PA), Shawn K. Fleming (PA), Daniel C. French (VA), Garry W. Garrison (WI), Gregory L. Horton (GA), Anthony B. Jones (WI), Jay T. Kirschmann (ND), Patrick G. Landers (NY), Paul J. Marshall (UT), Robert J. Pierce (MI), Kenneth B. Pratt (PA), James G. Rahn (IA), Ward A. Stone (WI), Todd J. Timmerman (WI) and James L. Weinert (OH) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 27, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33779 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0389]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 15 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2011–0389 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–(202) 493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want

acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The fifteen individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in intrastate commerce. The advisory criteria indicates that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Summary of Applications

Christopher Boddie

Mr. Boddie is a 52-year-old driver in the state of Pennsylvania. He had a single seizure event in March 2011 that his physician believes was the result of uncontrolled hypertension. He was placed on anti-seizure medication and anti-hypertensive medications in March 2011 and discontinued use in August of the same year. He states his blood pressure is under control and he continues to take his anti-hypertensive medication.

Roger Corvasce

Mr. Corvasce is a 40-year-old CMV driver form the state of New York. He was diagnosed with a brain tumor and had surgery to remove it successfully in January 2010. He was put on anti-seizure medication as a precaution after the surgery. His last seizure was December 2009. He remains on the same anti-seizure medication, with the dosage and frequency remaining the same for 2 years. His physician states he that his condition is stable. He would like to operate tractor trailer trucks in interstate commerce.

Joseph D'Angelo

Mr. D'Angelo is a 55-year-old CMV driver in the state of New York. He had a single seizure at the age of 14 in 1970. He has remained on anti-seizure medication since that time. The dosage and frequency of the anti-seizure medications have remained the same since 2002. His doctor states that his condition would not interfere with his ability to safely operate a commercial motor vehicle.

Michael Drake

Mr. Drake is a 37-year-old CMV driver in the state of Delaware. Mr. Drake had surgery in July 2009 to remove the part of his brain that was the focus of his seizures. His last seizure was July 2009. He is on the same anti-seizure medication, with the dosage and frequency remaining the same for over 10 years. His Neurologist states that there should be no restriction preventing him from having a CDL and that would likely obtain a level of safety that is equivalent or greater than other drivers.

Virgil Godbey

Mr. Godbey is a 52-year-old CMV driver in the state of Ohio. He was diagnosed with complex partial epilepsy in 2006. His last seizure was in 2006. He takes anti-seizure medication. The dosage and frequency of the anti-seizure medications have remained the same for 5 years. He has a good safety record in relation to his personal driving record and his physician states he is in excellent health.

Ricki Gutermann

Mr. Gutermann is a 45-year-old driver from the state of Wisconsin. He previously held a CDL and drove a truck for Mobil Oil. He was involved in a non-job related motor vehicle accident and sustained a traumatic head injury. He was prescribed anti-seizure medication and had two seizures in 1998 while physicians were adjusting his medication. His last seizure was July 1998. His physician states he is taking the same anti-seizure medication, with the dosage and frequency remaining the same for 13 years. The physician states that he feels it is appropriate to allow him to be recertified to drive commercial vehicles.

Glen Hogan

Mr. Hogan is a 57-year-old CMV driver in the state of Wisconsin. Mr. Hogan had a single seizure event in February 2010 and has been on the same anti-seizure medication since that time, with the dosage and frequency remaining the same for 22 months. His

last seizure was November 2009. He follows up regularly with his physician and his blood levels are in a therapeutic range. His physician states that he believes that in granting Mr. Hogan the exemption, he would maintain the same level of safety as other CMV drivers.

Jordan Hyster

Mr. Hyster is a 22-year-old CMV driver in the state of Ohio. Mr. Hyster was diagnosed with epilepsy in 2005 and placed on anti-seizure medication. His last seizure was in January 2009, after being told to stop his medication by previous physician. He is again on anti-seizure medication. The dosage and frequency of the anti-seizure medication has remained the same for 23 months. His physician states that he believes that Mr. Hyster will likely achieve a level of safety expected of drivers as long as he remains on medication.

David R. Kietzman

Mr. Keitzman is a 49-year-old CMV driver in the state of Wisconsin. In December 2007 he underwent surgery to remove a right parietal vascular malformation. His physician states that this brain abnormality was the cause of his seizures. He has been on the same anti-seizure medications with the dosage and frequency remaining the same since October 2008. His last seizure was October 2008. His physician states that he is neurologically normal. His current employer states that he has been an intrastate tractor semi-trailer driver for them since 1991 and has proven to be a safe, competent, and conscientious driver.

Joseph Kogut

Mr. Kogut is a 53-year-old CMV driver in the state of North Carolina. He was involved in a motor vehicle accident in 1982 and sustained a head injury. Following the accident, he had a single seizure. He has taken the same anti-seizure medication for more than 29 years with no change in dosage or frequency of use. His physician states that he feels that Mr. Kogut should be allowed to drive CMVs.

Philip McLain

Mr. McLain is 47-year old CMV driver in the state of Maine. He had a nighttime seizure-like episode in August 2010. He was diagnosed subsequently with AVM (Arteriovenous Malformation), a brain congenital condition. He underwent surgery to remove the defect and has had no further seizures or seizure-like episodes. His last seizure was in August 2010. He was given anti-seizure medication following the operation and has been off the medication since October 2010. He remains asymptomatic and his physician states she is in favor of allowing him to drive without restrictions.

Mr. Andy McNeal

Mr. McNeal is a 49-year-old driver in the state of Indiana. In 2007, he had a single seizure event and was diagnosed with a brain tumor. He had the tumor removed successfully and his last seizure was May 2007. He is taking anti-seizure medication, with the dosage and frequency for over 4 years. He has had an electro-encephalogram (EEG) in 2009 that showed no epileptiform activity and an Magnets Imaging Resonance (MRI) in 2010 showed no evidence of tumor recurrence. His physician states that although there is no way to guarantee his never having another seizure, neurological examination currently shows no deficits which would impair his safe operation of a motor vehicle.

Lonnie Reiker

Mr. Reiker is a 52-year-old driver who drives in the state of Illinois. Mr. Reiker was diagnosed with a brain tumor in December 2009 following a single seizure event in November 2009. He had surgery in March 2010 to remove the tumor and has been given anti-seizure medication following the surgery. The dosage and frequency of the anti-seizure medication has remained the same for more than 2 years. His last seizure was December 2009. Three subsequent MRIs indicate no tumor re-growth. His physician states that, in his opinion, at this time Mr. Reiker's driving safety is equivalent to other CMV drivers.

Mark A. Smith

Mr. Smith is a 51-year-old CMV driver in the state of California. He had a single episode of loss of consciousness in August 2010. He is taking the same anti-seizure medication with the dosage and frequency remaining the same for 16 months. His last seizure was August 2010. He is under the regular care of a neurologist, who states he is stable and doing very well. He states further that Mr. Smith is likely to achieve a level of safety that is equivalent or greater than the level of any other person to drive. He would be driving a semi truck and seeks to work five days on and then two days off.

Cheryl Woskie

Ms. Woskie is a 41-year-old Class B bus driver in the state of Massachusetts. She was diagnosed with a Cavernoma, a brain malformation, in October 2010, causing her to have three seizures within one month. Surgery was performed to remove the congenital defect and she was placed on anti-seizure medication, which was discontinued in November 2011. She would like to begin driving a bus again.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: December 22, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33781 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0325]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from twelve individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0325 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal Holidays.

• *Fax:* 1 (202) 493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the *Federal Register* on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The twelve individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Rene Amaya

Mr. Amaya, age 36, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''In my medical opinion, Rene Amaya has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Amaya reported that he has driven straight trucks for 2 years, accumulating 78,000 miles and tractor-trailer combinations for 2½ years, accumulating 102,500 miles. He holds a Class A Commercial Driver's License (CDL) from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian K. Cline

Mr. Cline, 32, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/60. Following an examination in 2011, his optometrist noted, ''In my medical opinion, with his vision correction, his vision allows him to perform commercial driving tasks.'' Mr. Cline reported that he has driven straight trucks for 3½; years, accumulating 88,000 miles and tractor-trailer combinations for 3 years, accumulating 18,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Judd

Mr. Judd, 49, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''It is my opinion that Mr. Judd has sufficient vision to perform driving tasks in a commercial vehicle.'' Mr. Judd reported that he has driven straight trucks for 9 years, accumulating 135,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mickey E. Lawson

Mr. Lawson, 50, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2011, his optometrist noted, ''I see no visual reason that Mr. Lawson would not be able to continue driving commercially (as he has for many years).''

Mr. Lawson reported that he has driven straight trucks for 10 years, accumulating 21 million miles and tractor-trailer combinations for 15 years, accumulating 577,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robbey J. Nelson

Mr. Nelson, 42, has had keratoconus in his left eye since 2002. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his optometrist noted, ''This patient has normal color vision and has sufficient vision to operate a motor vehicle commercial or otherwise.'' Mr. Nelson reported that he has driven straight trucks for 20 years, accumulating 500,000 miles and tractor-trailer combinations for 20 years, accumulating 400,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas M. Nubert

Mr. Nubert, 55, has had reduced vision in his right eye due to a birth defect. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''I feel that he does have sufficient vision to perform the driving tasks to operate a commercial vehicle.''

Mr. Nubert reported that he has driven straight trucks for 26 years, accumulating 572,000 miles and tractor-trailer combinations for 8 years, accumulating 240,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terri D. Payne

Ms. Payne, 43, has had amblyopia in her left eye since birth. The best corrected visual acuity in her right eye is 20/20 and in her left eye, 20/70. Following an examination in 2011, her optometrist noted, ''Based upon my findings and medical expertise, I, W.E. Robinson, Jr., hereby certify Terri D.

Payne to be visually able to safely operate a commercial motor vehicle.'' Ms. Payne reported that she has driven straight trucks for 12 years, accumulating 57,600 miles. She holds a Class D operator's license from Kentucky. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael C. Reese

Mr. Reese, 46, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, you have sufficient vision to perform the driving taks required to operate a commercial vehicle.'' Mr. Reese reported that he has driven tractor-trailer combinations for 15 years, accumulating 61,500 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark C. Reineke

Mr. Reineke, 60, has had macular scarring in his left eye due to a traumatic injury sustained in 1981. The best corrected visual acuity his right eye is 20/25 and in his left eye is finger-count vision. Following an examination in 2011, his ophthalmologist noted, ''I believe Mr. Reineke to have sufficient vision to operate a commercial vehicle.''

Mr. Reineke reported that he has driven straight trucks for 6 years, accumulating 18,000 miles and tractor-trailer combinations for 4 years, accumulating 60,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert T. Reynolds

Mr. Reynolds, 51, has had retinal vein occlusion in his right eye for the past five years. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''Due to the fact your vision is stable, I believe you have sufficient vision to perform you job as a commercial vehicle operator.'' Mr. Reynolds reported that he has driven straight trucks for 23 years, accumulating 3.4 million miles and tractor-trailer combinations for 5 years accumulating 1 million miles. He holds a Class D operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions in a CMV.

Lawrence D. Ventimiglia

Mr. Ventimiglia, 46, has had reduced vision in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/25. Following an examination in 2011, his optometrist noted, ''I certify that Larry has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ventimiglia reported that he has driven straight trucks for less than 3 years, accumulating about 31,200 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions in a CMV.

Chadwick L. Wyatt

Mr. Wyatt, 34, has had a central corneal scar in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his optometrist noted, ''Patient can recognize traffic control colors and has sufficient vision to operate a commercial vehicle.'' Mr. Wyatt reported that he has driven straight trucks for 2½ years, accumulating 137,500 miles and tractor-trailer combinations for 2½ years, accumulating 137,500 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business February 6, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: December 22, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33788 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0298]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seven individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective January 5, 2012. The exemptions expire on January 5, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On November 10, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 70213). That notice listed seven applicants' case histories. The seven individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the seven applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The seven exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including retinopathy, prosthesis, central scaring, amblyopia, melanoma and completely detached retina. In most cases, their eye conditions were not recently developed. Three of the applicants were either born with their vision impairments or have had them since childhood. The four individuals sustained their vision conditions as an adult and have had them for a period of five to twenty seven years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these seven drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 50 years. In the past 3 years, none of the drivers were involved in crashes, and one was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 10, 2011 notice (76 FR 70213).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of

single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the seven applicants, none of the applicants were involved in crashes, and one was convicted of a moving violation in a CMV; failure to stop at a traffic signal. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the seven applicants listed in the notice of November 10, 2011 (76 FR 70213).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the seven individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the seven exemption applications, FMCSA exempts Adam O. Carson (MS), Michael P. Eisenreich (MN), Carlton G. Frank (FL), Roger W. Hammock (AL), John T. Thor (MN), George Ulferts (IA) and Donald F. Wilton (CA) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 22, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33787 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0303]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 28, 2012. Comments must be received on or before February 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2009–0303, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of

the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Divison, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 17 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Teddy S. Bioni (PA)
John K. Butler (CT)
James J. Coffield (NM)
Roy E. Crayne (WA)
Ralph G. Debardi (WV)
James A. DuBay (MI)
Donald E. Halvorson (NM)
Gerald Harrison (FL)
Roger D. Kool (IA)
Phillip J.C. Locke (CO)
Rashawn L. Morris (VA)
Brian T. Nelson (MN)
James C. New (MS)
Christopher M. Rivera (NM)
Richard S. Robb (NM)
Robert E. Whitney (IL)
James M. Wood (NC)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (74 FR 60022; 75 FR 4623). Each of these 17 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 6, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 17 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 22, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33785 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–25246; FMCSA–2007–0017]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 27, 2012. Comments must be received on or before February 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–25246; FMCSA–2007–0017, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Divison, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Donald J. Bierwith, Jr. (CT)
Arthur L. Bousema (CA)
Norman E. Braden (CO)
Theodore W. Cozat (MI)
Matthew W. Daggs (MO)
Donald R. Date, Jr. (MD)
Gordon R. Fritz (WI)
Ronald K. Fultz (KY)
John E. Kimmet, Jr. (WA)
Robert S. Larrance (TN)
Robert C. Leathers (MO)
Jason L. Light (WA)
Donald R. McCracken (OR)
Kenneth R. Murphy (WA)
Michael J. Richard (LA)
Robert E. Sanders (LA)
Robert A. Sherry (PA)
Stephen G. Sniffin (CT)
John R. Snyder (WA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 66 FR 53826; 66 FR 66966; 68 FR

10300; 68 FR 37197; 68 FR 48989; 68 FR 52811; 68 FR 61860; 68 FR 69434; 70 FR 41811; 70 FR 48797; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 71884; 70 FR 72689; 71 FR 646; 71 FR 4632; 72 FR 180; 72 FR 9397; 72 FR 52422; 72 FR 58359; 72 FR 62897; 72 FR 67340; 72 FR 71995; 73 FR 5259; 74 FR 34394; 74 FR 60021; 74 FR 65845; 74 FR 64124; 75 FR 1451). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 6, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 27, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–33783 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6439, Notice No. 23]

Adjustment of Nationwide Significant Risk Threshold

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of adjustment of nationwide significant risk threshold.

SUMMARY: In accordance with Appendix D to Title 49 Code of Federal Regulations (CFR) Part 222, Use of Locomotive Horns at Highway-Rail Grade Crossings, FRA is updating the Nationwide Significant Risk Threshold (NSRT). This action is needed to ensure that the public has the proper threshold of permissible risk for calculating quiet zones established in relationship to the NSRT. This is the fifth update to the NSRT, which has fallen from 14,007 to 13,722.

DATES: The effective date is January 5, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Ries, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6299, or *Ronald.Ries@dot.gov;* or Kathryn Shelton, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6038, or *Kathryn.Shelton@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NSRT is an average of the risk indexes for gated public crossings nationwide where train horns are routinely sounded. FRA developed this risk index to serve as one threshold of permissible risk for quiet zones established under this rule across the nation. Thus, a community that is trying to establish and/or maintain its quiet zone, pursuant to 49 CFR Part 222, can compare the Quiet Zone Risk Index calculated for its specific crossing corridor to the NSRT to determine whether sufficient measures have been taken to compensate for the excess risk that results from prohibiting routine sounding of the locomotive horn. (In the alternative, a community can establish its quiet zone in comparison to the Risk Index With Horns, which is a corridor-specific measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within the quiet zone.)

In 2006, when the final rule titled, ''Use of Locomotive Horns at Highway-Rail Grade Crossings,'' was amended, the NSRT was 17,030 (71 FR 47614, August 17, 2006). In 2007, FRA recalculated the NSRT to be 19,047 (72 FR 14850, March 29, 2007). In 2008, FRA recalculated the NSRT to be 17,610 (73 FR 30661, May 28, 2008). In 2009, FRA recalculated the NSRT to be 18,775 (74 FR 45270, September 1, 2009). In 2010, FRA recalculated the NSRT to be 14,007 (75 FR 82136, December 29, 2010).

New NSRT

Using collision data from 2006 to 2010, FRA has recalculated the NSRT based on formulas identified in Appendix D to 49 CFR part 222. In making this recalculation, FRA noted that the total number of gated, non-whistle-ban crossings was 42,150.

$$\text{Fatality Rate} = \frac{\text{Fatalities}}{\text{Fatal Incidents}} = \frac{318}{251} = 1.2669$$

$$\text{Injury Rate} = \frac{\text{Injuries in Injury-Only Incidents}}{\text{Injury-Only Incidents}} = \frac{1009}{661} = 1.5265$$

Applying the fatality rate and injury rate to the probable number of fatalities and casualties predicted to occur at each of the 42,150 identified crossings and the predicted cost of the associated injuries and fatalities, FRA calculates the NSRT to be 13,722.

Issued in Washington, DC, on December 29, 2011.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2011–33782 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2011 Public Transportation on Indian Reservations Program Project Selections

AGENCY: Federal Transit Administration, DOT.

ACTION: Tribal Transit Program announcement of project selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects funded with Section 5311 (c), Public Transportation on Indian Reservations program funds in support of the Tribal Transit Program. Funding was announced in the Tribal Transit Program (TTP) Notice of Funding Availability on July 25, 2011. The TTP makes funds available to federally recognized Indian Tribes or Alaska Native villages, groups, or communities in support of capital projects, operating costs, and planning activities for public transportation services on and around Indian reservations.

FOR FURTHER INFORMATION CONTACT: Successful and unsuccessful applicants should contact the appropriate FTA Regional office (Appendix A) for information regarding applying for the funds or program specific information. In the event the contact information provided by your tribe in the application has changed, please contact your tribal liaison with the current information in order to expedite the grant award process. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–0893, email: *Lorna.Wilson@dot.gov.* A TDD is available at 1–(800) 877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: A total of $15.075 million is available for the FY 2011 Tribal Transit program. A total of 116 applicants requested $41.587 million, indicating significant demand for funds for new transit services, enhancement or expansion of existing transit services, and planning studies including operational planning. Project proposals were evaluated based on each applicant's responsiveness to the program evaluation criteria outlined in FTA's, July 25, 2011 NOFA. FTA also took into consideration the current status of previously funded applicants. A total of 67 applications have been selected for funding. The projects selected as shown in Table 1 will provide funding for transit planning studies/and or operational planning, startup projects for new transit service, and for the operational expenses of existing transit services.

Project Implementation: Grantees selected for competitive discretionary funding should work with their FTA regional office to finalize the grant application in FTA's Transportation Electronic Awards Management System (TEAM) for the projects identified in Table I so that funds can be obligated expeditiously. FTA funds may only be used for eligible purposes defined under 49 U.S.C 5311 and described in FTA Circular 9040.1F. In cases where the allocation amount is less than the proposer's requested amount, grantees should work with their regional office to reduce scope or scale the project such that a completed phase or project is accomplished. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TEAM application. The post-award reporting requirements include submission of the Federal Financial Report (FFR) and Milestone Report in TEAM as appropriate (see FTA Circular 9040. IF).

The grantee must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out the project supported by the FTA grant. Funds allocated in this announcement must be obligated in a grant by September 30, 2014.

Issued in Washington, DC, this 29th day of December, 2011.

Peter M. Rogoff,

Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Mary Beth Mello, Regional Administrator, Region 1–Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. (617) 494–2055.

Regional Tribal Liaisons: Laurie Ansaldi and Judi Molloy.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Anthony Carr, Acting Regional Administrator, Region 2–New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. (212) 668–2170, Regional Tribal Liaison: Darin Allan.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. (212) 668–2202.

Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. (817) 978–0550.

Regional Tribal Liaison: Lynn Hayes.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7–Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. (816) 329–3920.

Regional Tribal Liaisons: Joni Roeseler and Cathy Monroe.

States served: Iowa, Kansas, Missouri, and Nebraska.

FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Brigid Hynes-Cherin, Regional Administrator, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. (215) 656–7100.
States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.
Washington, D.C. Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. (202) 219–3562.
Yvette Taylor, Regional Administrator, Region 4–Atlanta, 230 Peachtree Street, NW Suite 800, Atlanta, GA 30303, Tel. (404) 865–5600.
Regional Tribal Liaison: Tajsha LaShore
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.
Marisol Simon, Regional Administrator, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. (312) 353–2789.
Regional Tribal Liaisons: Joyce Taylor and Angelica Salgado
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Chicago Metropolitan Office, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. (312) 353–2789.
Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. (720) 963–3300.
Regional Tribal Liaisons: Jennifer Stewart and David Beckhouse.
States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Leslie T. Rogers, Regional Administrator, Region 9–San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. (415) 744–3133.
Regional Tribal Liaison: Eric Eidlin.
States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.
Los Angeles Metropolitan Office, Region 9–Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. (213) 202–3952.
Rick Krochalis, Regional Administrator, Region 10–Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. (206) 220–7954.
Regional Tribal Liaison: Bill Ramos.
States served: Alaska, Idaho, Oregon, and Washington.

BILLING CODE 4910–57–P

TRIBAL TRANSIT PROGRAM PROJECT SELECTIONS

State	Project ID	Recipient	Project Description	Allocation
AK	D2011-TRTR-001; D2011-TRTR-10001	Bristol Bay Native Association	Planning	$75,000
AK	D2011-TRTR-002	Gulkana Village Council	Operating	$328,085
AK	D2011-TRTR-003	Knik Tribal Council	Planning	$22,000
AK	D2011-TRTR-004	Native Village of Kobuk	Planning	$25,000
AK	D2011-TRTR-005	Native Village of Noatak	Start up (Operating and Capital)	$175,000
AK	D2011-TRTR-006	Noorvik Native Community	Planning	$25,000
AK	D2011-TRTR-007	Sitka Tribe of Alaska	Operating	$239,100
AK	D2011-TRTR-008	Tetlin Village Council	Operating	$230,000
AK	D2011-TRTR-009	Venetie Village Council	Planning	$25,000
AL	D2011-TRTR-010	Poarch Band of Creek Indians	Operating and Capital	$155,584
AZ	D2011-TRTR-011	Navajo Nation Transit	Operating	$475,000
CA	D2011-TRTR-012	Bishop Paiute Tribe	Operating, Capital and Planning	$182,828
CA	D2011-TRTR-013	Blue Lake Rancheria	Operating	$88,000
CA	D2011-TRTR-014	Quartz Valley Indian Reservation	Planning	$25,000
CA	D2011-TRTR-015	Quechan Indian Tribe	Start up (Operating and Planning)	$232,007
CA	D2011-TRTR-016	Reservation Transportation Authority	Operating	$351,858
CA	D2011-TRTR-017	Susanville Indian Rancheria	Operating	$466,602
CA	D2011-TRTR-018	Tule River Tribal Council	Planning	$25,000
CA	D2011-TRTR-019	Yurok Tribe	Operating	$206,843
CO	D2011-TRTR-020	Southern Ute Indian Tribe	Operating	$287,056
IA	D2011-TRTR-021	Sac & Fox Tribe of the Mississippi in Iowa	Planning	$25,000
ID	D2011-TRTR-022	Coeur d' Alene Tribe	Operating	$92,867
ID	D2011-TRTR-023	Nez Perce Tribe	Operating	$500,000
KS	D2011-TRTR-024	Prairie Band Potawatomi Nation	Operating	$150,000
MI	D2011-TRTR-025	Bay Mills Indian Community	Start up (Operating and Capital)	$213,136
MI	D2011-TRTR-026	Little River Band of Ottawa Indians	Planning	$25,000
MI	D2011-TRTR-027	Little Traverse Bay Bands of Odawa Indians	Start Up (Mobility Management)	$124,000
MN	D2011-TRTR-028	Fond du Lac Band of Lake Superior Chippewa	Operating	$285,000

TRIBAL TRANSIT PROGRAM PROJECT SELECTIONS

MN	D2011-TRTR-029	Red Lake Band of Chippewa Indians	Operating	$400,000
MS	D2011-TRTR-030	Mississippi Band of Choctaw Inc	Capital	$200,000
MT	D2011-TRTR-031	Confederated Salish and Kootenai Tribes	Operating	$475,000
MT	D2011-TRTR-032	Northern Cheyenne Tribe	Operating	$398,007
NC	D2011-TRTR-033	Eastern Band of Cherokee Indians	Operating	$140,000
ND	D2011-TRTR-034	Sitting Bull College	Operating	$200,860
NE	D2011-TRTR-035	Ponca Tribe of Nebraska	Operating and Capital	$239,808
NE	D2011-TRTR-036	Winnebago Tribe of Nebraska	Operating	$450,000
NM	D2011-TRTR-037	Pueblo of San Felipe	Planning	$25,000
NM	D2011-TRTR-038	Pueblo of Santa Ana	Operating	$194,529
NV	D2011-TRTR-039	Duckwater Shoshone Tribe	Operating and Capital	$75,000
NY	D2011-TRTR-040	Saint Regis Mohawk Tribe	Start up (Operating and Capital)	$475,000
OK	D2011-TRTR-041	Cherokee Nation	Operating	$450,000
OK	D2011-TRTR-042	Cheyenne and Arapaho Tribes	Operating	$450,000
OK	D2011-TRTR-043	Choctaw Nation of Oklahoma	Operating	$284,867
OK	D2011-TRTR-044	Citizen Potawatomi Nation	Operating	$450,000
OK	D2011-TRTR-045	Miami Tribe of Oklahoma	Operating	$500,000
OK	D2011-TRTR-046	Muscogee (Creek) Nation	Operating	$500,000
OR	D2011-TRTR-047	Confederated Tribes of Grand Ronde	Operating	$248,000
OR	D2011-TRTR-048	Confederated Tribes of Siletz Indians	Operating	$187,683
OR	D2011-TRTR-049	Confederated Tribes of the Umatilla Indian Reservation	Operating	$338,372
SC	D2011-TRTR-050	Catawba Indian Nation	Operating	$385,518
SD	D2011-TRTR-051	Cheyenne River Sioux Tribe	Operating	$500,000
SD	D2011-TRTR-052	Lower Brule Sioux Tribe	Operating	$250,000
SD	D2011-TRTR-053	Oglala Sioux Tribe	Operating	$345,430
TX	D2011-TRTR-054	Alabama-Coushatta Tribe of Texas	Planning	$25,000
WA	D2011-TRTR-055	Jamestown S'Klallam Tribe	Operating	$160,680
WA	D2011-TRTR-056	Kalispel Tribe of Indians	Operating	$134,014
WA	D2011-TRTR-057	Lummi Nation	Operating	$300,000
WA	D2011-TRTR-058	Nisqually Indian Tribe	Planning	$25,000
WA	D2011-TRTR-059	Nooksack Indian Tribe	Planning	$25,000

TRIBAL TRANSIT PROGRAM PROJECT SELECTIONS

WA	D2011-TRTR-060	Quinault Indian Nation	Operating	$291,806
WA	D2011-TRTR-061	Samish Indian Nation	Planning	$25,000
WA	D2011-TRTR-062	Sauk-Suiattle Indian Tribe	Planning	$25,000
WA	D2011-TRTR-063	Skokomish Indian Tribe	Operating	$73,400
WA	D2011-TRTR-064	Stillaguamish Tribe of Indians	Planning	$25,000
WA	D2011-TRTR-065	The Tulalip Tribes of Washington	Operating	$247,060
WI	D2011-TRTR-066	Menominee Indian Tribe of Wisconsin	Operating	$475,000
WI	D2011-TRTR-067; D2011-TRTR-12001	Stockbridge-Munsee Community	Planning	$25,000
			Total	$15,075,000

[FR Doc. 2011–33780 Filed 1–4–12; 8:45 am]

BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Neville Peterson LLP on behalf of Trinity Industries, Inc. (WB605–8–12/20/11) for permission to use certain data from the Board's 2009 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33820 Filed 1–4–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974; Amended System of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of proposed alteration to a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the United States Department of the Treasury, Bureau of Engraving and Printing (BEP) gives notice of alterations to its Privacy Act system of records entitled ''Treasury/BEP .027—Access Control and Alarm Monitoring Systems (ACAMS).''

DATES: Comments must be received no later than February 6, 2012. The proposed alterations to the system of records will become February 9, 2012 unless the BEP receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Office of the Chief Counsel, United States Department of the Treasury, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228, Room 419–A, Attention: Revisions to PA Systems of Records. Comments can be faxed to (202) 874–5710, or emailed to *Keir.Bancroft@bep.gov.* For emails, please place ''Revisions to SOR'' in the subject line. Comments will be made available for public inspection upon written request. The BEP will make such comments available for public inspection and copying at the above-listed location, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 874–5915. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Keir X. Bancroft, Privacy Officer, United States Department of the Treasury, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228, by phone at (202) 874–5915, or by email at *Keir.Bancroft@bep.gov.*

SUPPLEMENTARY INFORMATION: On June 29, 2009, the Bureau of Engraving and Printing, a bureau within the United States Department of the Treasury, published its inventory of Privacy Act systems of records at 74 FR 31090. Included within that inventory was a system of records entitled ''Treasury/BEP .027—Access Control and Alarm Monitoring Systems (ACAMS).'' BEP proposes to amend that system of records by adding language under the ''categories of records in the system'' and ''retention and disposal'' sections.

Under the existing system of records, the following information is maintained concerning individuals issued ''Escort Visitor'' badges (including official visitors and contractors who are allowed to move within a BEP facility only with an escort): full name; date of issue; and date, time, and location of each passage through a security control point.

BEP is incorporating scanning technology in its facilities to allow for a visitor's identification (*e.g.,* driver's license or passport) to be scanned, and for the information contained on that piece of identification to be used in generating an Escort Visitor badge. This will speed the process by which a visitor's information is entered into an Escort Visitor badge. It will also allow BEP to maintain a photograph of a visitor that is issued an Escort Visitor badge. This amendment will help BEP make full use of its scanning technology in processing Escort Visitor badges and further ensure the security of BEP facilities by capturing photographs.

BEP is amending the ''categories of records in the system'' by including in the information maintained for visitors issued Escort Visitor badges all data contained on their personal identification, such as photograph, date

of birth, home address, driver's license number, and passport number.

BEP is also amending the ''retention and disposal'' parameters set forth in this system by detailing that data scanned from personal identification other than full name and photograph are disposed of immediately upon collection. The only data on an identification card that BEP uses for developing an Escort Visitor badge are the name and photograph of the visitor. BEP's scanning hardware collects that data and digitizes them for use in ACAMS. The scanning hardware, however, also collects all of the other data on the identification card. That is because the entire card is scanned, not just certain portions of the card. Depending on the type of card, the other data collected from the identification card may include date of birth, home address, driver's license number, and passport number. ACAMS only retains the name and photograph of a visitor from an identification card. The scanning hardware immediately deletes any remaining data. The update to the retention and disposal parameters reflects BEP's ability to use its electronic scanning technology to instantaneously delete information that is not necessary when creating an Escort Visitor badge.

The altered system of records report has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) and Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For the reasons set forth in the preamble, BEP proposes to amend its system of records entitled ''BEP .027—Access Control and Alarm Monitoring Systems (ACAMS),'' as follows:

Treasury/BEP .027

SYSTEM NAME:

Access Control and Alarm Monitoring Systems (ACAMS).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of the change: Category (C) is revised to read:

''(C) Official visitors, contractors, and others issued ''Escort Visitor'' badges: photograph; full name; date of birth; home address; driver's license number; passport number; date of issue; and date, time, and location of each passage through a security control point; and any additional data contained on an identification card presented when seeking an Escort Visitor badge is maintained in the BEP ACAMS.''

* * * * *

RETENTION AND DISPOSAL:

Description of the change: Remove current entry and in its place add the following:

''The retention period is two (2) years, except that for official visitors, contractors, and others issued ''Escort Visitor'' badges, information other than name and photograph scanned from identification cards is disposed of immediately upon collection.''

* * * * *

Dated: December 22, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2011–33816 Filed 1–4–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal of Suspicious Activity Reporting by the Securities and Futures Industry

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on the renewal of an information collection requirement for the recordkeeping and reporting of suspicious activity activities by the Securities and Futures Industry,[1] Office of Management and Budget Control Number 1506–0019. The report, (BSA–SAR)[2] will be used by the securities and futures industry to report suspicious activity to the Department of the Treasury. This request for comments also covers 31 CFR 1026.320 and 31 CFR 1023.320. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before March 5, 2012.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—SAR–Securities and Futures Industry. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—SAR–Securities and Futures Industry.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at (800) 949–2732, select option 3.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Reporting by the Securities and Futures Industry, 31 CFR 1026.320, and 31 CFR 1023.320.

OMB Number: 1506–0019.

Form Number: FinCEN Form 111 (BSA–SAR)[3].

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[4] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Chapter X. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On July 1, 2002, FinCEN issued a final rule requiring

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[1] The securities and futures industry are those entities regulated by the Security and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) as regulated under 31 CFR Chapter X.

[2] The BSA–SAR was approved by OMB under control number 1506–0065. This single report replaces the SAR–DI, C, MSB and SF. The current SAR–SF, as posted at *www.fincen.gov/forms*, may be used through March 2013.

[3] See footnote 2.

[4] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''USA PATRIOT Act''), Public Law 107–56.

brokers or dealers in securities (''broker-dealers'') to report suspicious transactions (''Broker-Dealer SAR rule''), (67 FR 44048). The final Broker-Dealer SAR rule can also be found at 31 CFR 1023.320. On August 5, 2002, FinCEN issued a final rule requiring futures commission merchants and introducing brokers in commodities to report suspicious transactions (''FCM SAR rule''), (67 FR 50751). The final FCM SAR rule can also be found at 31 CFR 1026.320.

The information collected is required to be provided pursuant to 31 U.S.C. 5318(g), 31 CFR 1026.320 and 31 CFR 1023.320. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel, and to the registered securities associations and national securities exchanges (so-called self-regulatory organizations) for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, terrorist financing, tax violations, fraud, and other financial crimes.

Broker-dealers, futures commission merchants, and introducing brokers in commodities required to report suspicious transactions, or reporting such transactions voluntarily, will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and to the prohibition contained in 31 U.S.C. 5318(g)(2) against notifying any person involved in the transaction that a suspicious activity report has been filed.

Type of Review: Renewal of a currently approved information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Reporting and Recordkeeping Burden: 1 hour [5].

Estimated number of respondents = 8,300.

Estimated Total Annual Responses = 8,300.

Estimated Total Annual Reporting and Recordkeeping Burden: 8,300 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 29, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–33855 Filed 1–4–12; 8:45 am]

BILLING CODE 4810–02P–P

[5] The reporting and recordkeeping burden of the regulations (31 CFR 1026.320 and 1023.320) is reflected in the burden for the BSA–SAR as approved under 1506–0065. This listed burden is assigned to maintain control number 1506–0019 active as a reporting requirement.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—Evergreen National Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The underwriting limitation for Evergreen National Indemnity Company (NAIC #12750), which was listed in the Treasury Department Circular 570, published on July 1, 2011, is hereby amended to read $3,220,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this amendment.

The Circular may be viewed and downloaded through the Internet at *www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: December 20, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2011–33738 Filed 1–4–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; Western Bonding Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Western Bonding Company (NAIC# 13191) under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective today. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: December 20, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2011–33739 Filed 1–4–12; 8:45 am]

BILLING CODE 4810–35–M

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emissions Standards for Hazardous Air Pollutants From Secondary Lead Smelting; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0344; FRL–9610–9]

RIN 2060–AQ68

National Emissions Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review conducted for the secondary lead smelting source category regulated under national emission standards for hazardous air pollutants. These final amendments include revisions to the emissions limits for lead compounds; revisions to the standards for fugitive emissions; the addition of total hydrocarbon and dioxin and furan emissions limits for reverberatory and electric furnaces; the addition of a work practice standard for mercury emissions; the modification and addition of testing and monitoring, recordkeeping, and reporting requirements; related notifications; and revisions to the regulatory provisions related to emissions during periods of startup, shutdown, and malfunction.

DATES: This final action is effective on January 5, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 5, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0344. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (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 EPA Docket Center, EPA West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Nathan Topham, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–0483; fax number: (919) 541–3207; and email address: *topham.nathan@epa.gov.* For additional contact information, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: For specific information regarding the risk assessment and exposure modeling methodology, contact Dr. Michael Stewart, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Toxics Assessment Group (C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–7524; fax number: (919) 541–0840; and email address: *stewart.michael@epa.gov.* For information about the applicability of this NESHAP to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

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

NESHAP for	OECA contact [a]	OAQPS contact [b]
Secondary Lead Smelting	Maria Malave, (202) 564–7027, *malave.maria@epa.gov.*	Nathan Topham, (919) 541–0483, *topham.nathan@epa.gov.*

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

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CBI confidential business information
CDX Central Data Exchange
CEMS continuous emission monitoring system
CPMS continuous parameter monitoring system
D/F dioxins and furans
ERT Electronic Reporting Tool
HAP hazardous air pollutants
HQ hazard quotient
ICR information collection request
lbs/yr pounds per year
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NESHAP National Emission Standards for Hazardous Air Pollutants
ng/dscm nanograms per dry standard cubic meter
NTTAA National Technology Transfer and Advancement Act
OP Office of Policy
ppbv parts per billion by volume
ppbw parts per billion by weight
ppmv parts per million by volume
ppmw parts per million by weight
REL recommended exposure limit
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulatory Information Number
RTR Risk and Technology Review
SRF short rotary furnace
TEF toxic equivalency factor
TEQ toxic equivalency quotient
THC total hydrocarbons
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
UPL upper prediction limit
WWW World Wide Web

Background Information Document. On May 19, 2011 (76 FR 29032), the EPA proposed revisions to the Secondary Lead Smelting NESHAP based on evaluations performed by the EPA in order to conduct our risk and technology review. In this action, we are finalizing decisions and revisions for the rule. Some of the significant comments and our responses are summarized in this preamble. A summary of the public comments on the proposal not presented in the preamble, and the EPA's responses to those comments, is available in Docket ID No. EPA–HQ–OAR–2011–0344. A tracked changes version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
A. Does this action apply to me?
B. What is the affected source?
C. Where can I get a copy of this document?

D. Judicial Review
II. Background
III. Summary of the Final Rule
A. What are the final rule amendments for the Secondary Lead Smelting source category?
B. What are the effective and compliance dates of the standards?
C. What are the requirements for submission of performance test data to the EPA?
IV. Summary of Significant Changes Since Proposal
A. Changes to the Risk Assessment Performed Under CAA Section 112(f)
B. Changes to the Technology Review Performed Under CAA Section 112(d)(6)
C. Other Changes Since Proposal
V. Summary of Significant Comments and Responses
A. Use of Lead Primary NAAQS as a Measure of Acceptability of Risk for Public Health
B. Total Enclosure Requirements
C. Work Practice Standard Requirements
D. Emission Standards for Organic HAP From Rotary Furnaces
E. The EPA's Risk Assessment Supporting the Proposed Rule
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VI. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected facilities?
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VII. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
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F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 2 of this preamble.

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [a] Code	MACT [b] Code
Secondary Lead Smelting	331492	0205

[a] North American Industry Classification System.
[b] Maximum Achievable Control Technology.

Table 2 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. As defined in the source category listing report published by the EPA in 1992, the Secondary Lead Smelting source category is defined as any facility at which lead-bearing scrap materials (including, but not limited to lead acid batteries) are recycled by smelting into elemental lead or lead alloys.[1] For clarification purposes, all reference to lead emissions in this preamble means ''lead compounds'' (which is a hazardous air pollutant) and all reference to lead production means elemental lead (which is not a hazardous air pollutant) as provided under CAA section 112(b)(7).

If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the affected source?

The final rule applies to owners and operators of secondary lead smelters. The affected source for this subpart is any of the following sources at a secondary lead smelter: Blast, reverberatory, rotary, and electric furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive emissions sources; buildings containing lead bearing materials; and fugitive dust sources. A new affected source is any affected source at a secondary lead smelting facility of which the construction or reconstruction commenced after May 19, 2011. If components of an existing affected source are replaced such that the replacement meets the definition of reconstruction in 40 CFR 63.2 and the reconstruction commenced on or after May 19, 2011, then the existing source becomes a reconstructed source and is subject to the relevant standards for a new affected source. The reconstructed source must comply with the requirements for a new affected source upon initial startup of the reconstructed source, or by March 5, 2012, whichever is later.

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

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

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

D. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 5, 2012. 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 the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania

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

Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

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

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

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

On May 19, 2011, the EPA published a proposed rule in the **Federal Register** for the Secondary Lead Smelting NESHAP, 40 CFR part 63, subpart X that took into consideration the residual risk and technology review (RTR) analyses. Today's action provides the EPA's final determinations pursuant to the RTR provisions of CAA section 112 for the Secondary Lead Smelting source category, and also promulgates first-time standards under section 112 (d)(2) (MACT) for certain hazardous air pollutants emitted by secondary lead smelters. Specifically, we are taking the following actions:

- Revising some requirements of the NESHAP related to control of metal HAP emissions based on our risk assessment and technology reviews.
- Finalizing first-time total hydrocarbon (THC) and dioxin and furan (D/F) emissions limits and a plastic separation work practice standard to prevent dioxin formation.
- Finalizing work practice standards for mercury.
- Revising the requirements in the NESHAP related to emissions during periods of startup, shutdown, and malfunction (SSM).
- Incorporating the use of plain language into the rule.
- Addressing technical and editorial corrections in the rule.

III. Summary of the Final Rule

A. What are the final rule amendments for the Secondary Lead Smelting source category?

EPA promulgated the National Emission Standards for Hazardous Air Pollutant Emissions: Secondary Lead Smelting on June 13, 1997 (62 FR 32216). The standards are codified at 40 CFR part 63, subpart X. The secondary lead smelting industry consists of facilities that recycle lead-bearing scrap material, typically lead acid batteries, into elemental lead or lead alloys. The source category covered by this MACT standard currently includes 16 facilities, including one facility that is not currently operating and one facility that is in the process of being constructed.

This section describes the final amendments to the secondary lead smelting NESHAP.[2] These revisions include changes to the stack and fugitive metal HAP emission standards, the addition of new THC and D/F emission limits, the addition of a work practice standard to separate plastics from automotive batteries to prevent dioxin emissions, the addition of work practice standards to minimize mercury emissions, and changes to the requirements that apply during periods of startup, shutdown, and malfunction. In addition to these changes described below, we are making minor changes to the regulatory text to correct editorial errors and to make plain language revisions. We have evaluated the cost, emissions reductions, energy implications and cost effectiveness of all of the standards being promulgated in this final rule and have determined that these measures are cost effective, technically feasible and will provide the public with an ample margin of safety from exposure to emissions from the secondary lead smelter source category. See *Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category,* which is available in the docket, for information on the costs and cost effectiveness of each of the standards being promulgated in this final rule.

1. Stack and Fugitive Metal HAP Emission Standards

For the reasons provided in Section IV.A of this preamble and in the support documents in the docket, we have determined that the risks associated with emissions from this source

[2] Note that the EPA is reprinting portions of the language from the 1997 NESHAP here so the entire rule appears in one place, for readers' convenience. The EPA is not amending, reopening or otherwise reconsidering these reprinted portions of the 1997 rule.

category are unacceptable primarily due to fugitive emissions of lead. We have further determined that there have been developments in practices, processes, and control technologies that warrant revisions to the MACT standard (*i.e.,* the standards promulgated pursuant to section 112(d)(2) and (3)) for this source category. Therefore, to satisfy the requirements of CAA sections 112(d)(6) and 112(f), we are revising the MACT standard to include:

• A facility wide, flow weighted average lead [3] emissions limit from stacks of 0.20 mg/dscm and an individual stack lead emissions limit of 1.0 mg/dscm for each stack at existing sources. For new sources, a lead emissions limit of 0.20 mg/dscm applies to each individual stack at a modified or ''greenfield'' new facility.

• A requirement for the facility to operate sources of fugitive lead emissions within total enclosures that are maintained under negative pressure and vented to a control device. These sources of fugitive emissions include the smelting furnaces, smelting furnace charging areas, lead taps, slag taps, molds during tapping, battery breakers, refining kettles, casting areas, dryers, material handling areas, and areas where dust from fabric filters, sweepings or used fabric filters are processed. The facilities are also required to adopt a list of specified work practice standards to minimize fugitive emissions.

2. Organic HAP Emissions Standards

To satisfy CAA sections 112(d)(2) and 112(d)(3), we are also revising the MACT standard to include first-time D/F and THC emission limits (with THC serving as a surrogate for non-dioxin organic HAP). These emission limits are summarized in Table 3 of this preamble.

TABLE 3—SUMMARY OF NEW THC AND D/F EMISSION LIMITS

Source type	D/F Emission limit [a]	THC Emission Limit [b]
New and Existing Collocated Blast and Reverberatory Furnaces	0.50	[c] 20
Existing Blast Furnaces	170	[c] 360
New Blast Furnaces	10	[c] 70
New and Existing Reverberatory and Electric Furnaces	1.0	12

[a] ng/dscm on a TEQ basis, corrected to 7 percent O_2.
[b] ppmv as propane, corrected to 4 percent CO_2.
[c] Emission limit is unchanged from 1997 NESHAP.

3. Startup, Shutdown, and Malfunction

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

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

In establishing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has established different standards for non-dioxin organic HAP during those periods.

Information on periods of startup and shutdown in the industry indicate that lead emissions during these periods do not increase (consistent with our engineering judgment that lead emissions would not increase during these periods because lead-bearing feed is not being smelted during these periods). Furthermore, all lead-emitting processes are controlled by either control devices or work practices and these controls would not typically be affected by startup or shutdown. Therefore, the EPA is not adopting separate lead-emission standards for periods of startup and shutdown.[4]

The EPA has revised this final rule to require sources to meet a work practice standard that requires the development of standard operating procedures designed to minimize emissions of THC for each start-up and shutdown scenario anticipated for all units subject to THC limits. Temperature monitoring is the metric used to determine continuous compliance with emission standards for THC. This metric is inappropriate as a measure of the destruction efficiency of these organic pollutants during periods of startup and shutdown.

The EPA is not including a standard for dioxins and furans during periods of startup and shutdown. This is because dioxins and furans will not be emitted during those periods. During startup and shutdown, scrap feed materials (including chlorinated plastics and flame retardants) that contain the precursors needed for dioxin formation are not introduced into the smelter [5] so there are no conditions that could give rise to dioxin and furan emissions.

The EPA determined that it is not technically and economically feasible for units subject to THC limits to perform stack testing for this pollutant during periods of startup and shutdown due to technical and economic

[3] Throughout this preamble, all references to lead emissions means lead compounds as listed by Congress at section 112(b)(1) of the Act.

[4] Since startup and shutdown refers to the smelting process, and not to ancillary management activities, there are no startup and shutdown standards for process fugitive emissions since startup and shutdown do not occur for the activities generating such emissions.

[5] ''Shutdown'' is defined as a period ''when no lead bearing materials are being fed to the furnace and smelting operations have ceased * * *''. Section 63.542 (definition of ''shutdown'').

impracticality associated with testing secondary lead smelting furnaces during these periods. The furnaces are heated during periods of startup through slow feeding of natural gas and small amounts of coke, with no lead acid batteries fed to the furnace during these periods. Test crews would have to be on-site prior to a period of startup or shutdown occurring and may need to break up a single test over multiple startups or shutdowns, the length of which could vary depending on the type of secondary lead smelting furnace being tested, that would happen infrequently to gather enough data to complete a three-run test. See also section V.G of this preamble discussing these standards further.

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

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (DC Cir. 1999) (EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem.) We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study''. See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties', such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, the goal of a best-controlled or best-performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute. In section 3.2.1 of the separate response to comment document, we respond to comments that emissions during malfunctions should be accounted for in assessing risk pursuant to CAA section 112(f)(2).

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

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emission standard. (*See, e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (September 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (February 15, 1983).) The EPA is therefore adding to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 63.542 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 63.552 (see 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.552 and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with CAA section 113 (see also 40 CFR 22.27).

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

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

The revisions to the MACT standards being promulgated in this action are effective on January 5, 2012. For the MACT standards being addressed in this action, the compliance date for the revised SSM requirements is the effective date of the standards, January 5, 2012. The compliance date for existing sources for the revised stack lead emission limit and the revised fugitive emission standard including the requirement to adopt work practice standards and install total enclosures for specified process fugitive emission sources, and for the new D/F and THC emission limits, is 2 years from the effective date of the standard, January 6, 2014. New sources must comply with the all of the standards immediately upon the effective date of the standard, January 5, 2012, or upon startup, whichever is later.

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

In this action, as a step to increase the ease and efficiency of data submittal and improve data accessibility, the EPA is requiring the electronic submittal of select performance test data. Specifically, the EPA is requiring owners and operators of secondary lead smelting facilities to submit electronic copies of performance test reports required under 40 CFR 63.543 to the EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

The EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emission factor development, and annual emission rate determinations. In conducting these required reviews, the EPA has found it ineffective and time consuming, not only for us, but also for other regulatory agencies and for source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

One major advantage of submitting performance test data through the Electronic Reporting Tool (ERT) is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When the EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This results in a reduced burden on both affected facilities (in terms of reduced labor to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and tribal agencies can also benefit from a more streamlined and accurate review of electronic data submitted to them. The ERT allows for an electronic review process rather than a manual data assessment making review and evaluation of the data and calculations easier and more efficient.

As mentioned above, data entry will be through an electronic emissions test report structure called the Electronic Reporting Tool or ERT. The ERT will generate an electronic report which will be submitted using the Compliance and Emissions Data Reporting Interface (CEDRI). The submitted report is transmitted through the EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and would apply only to those performance tests conducted using test methods that are supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://*

www.epa.gov/ttn/chief/ert/index.html. We believe that industry will benefit from this new electronic data submittal requirement. Having these data, the EPA will be able to develop improved emission factors, make fewer information requests, and promulgate better regulations. The information to be reported is already required for the existing test methods and is necessary to evaluate the conformance to the test method.

Finally, another benefit of submitting data to WebFIRE electronically is that these data will greatly improve the overall quality of the existing and new emission factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA will be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, tribal agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and, as a result, air quality regulations.

IV. Summary of Significant Changes Since Proposal

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

In the proposed rulemaking, the EPA presented a number of options for additional controls on the Secondary Lead Smelting source category. In that notice, the EPA solicited comment on the proposed options as well as on all of the analyses and data upon which the options were based, including the risk methods and results presented in the draft document: *Residual Risk Assessment for the Secondary Lead Smelting Source Category.*

During the public comment period for the proposed rule, several parties submitted comments and suggested revisions regarding the emissions used for the risk assessment, and also submitted other information relevant to the risk assessment (see docket ID EPA–HQ–OAR–2011–0344 for all public comments). After considering these submissions, the EPA revised its analyses. Revised methods, model inputs, and risk results are presented in the report: *Residual Risk Assessment for the Secondary Lead Smelting Source Category,* which is available in the docket for this rulemaking. In addition, a discussion of the updated emissions information used in the final risk assessment can be found in the memorandum titled: *Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category,* which can also be found in the docket for this rulemaking.

Considering the updated emissions information received during the public comment period for the proposed rule, our final risk analysis estimates that the primary NAAQS for lead, used in this rule as a measure of acceptable risk from air-borne lead emissions, could be exceeded at 9 of 15 facilities based on actual emissions, largely due to fugitive dust emissions (see Table 4). At these 9 facilities, fugitive dust emissions account for about 94 to 99 percent of the estimated 3-month maximum lead concentrations.[6] Our analysis also estimates that approximately 200 people live in areas around three of these facilities where 3-month maximum lead concentrations are estimated to be between one and three times above the lead NAAQS. Allowable stack emissions of lead also resulted in modeled concentrations exceeding the NAAQS, with modeled lead ambient air levels as high as 8 and 10 times above the NAAQS. This analysis also estimates that 3-month maximum lead concentrations from a secondary lead smelter could be up to about 20 times the NAAQS for lead based on actual emissions. The maximum lead exceedances at populated census block centroids were between one and three times the NAAQS. There is some uncertainty associated with the fugitive emissions estimates that is derived from the uncertainty involved in determining the housekeeping and enclosure factors. This uncertainty could have important impacts on the estimated fugitive emissions and the resulting modeled ambient concentration. For example, if the level of control assumed through the use of full enclosure and robust housekeeping were both increased from 75 percent to 85 percent, the estimated fugitive emissions at the RSR facility would be about 43 pounds (roughly three times lower than those estimated in this rule). If the level of control assumed through the use of full enclosure and robust housekeeping were both decreased from 75 percent to 65 percent, the estimated fugitive emissions at the RSR facility would be about 240 pounds (roughly two times higher than those estimated in this rule). As shown in this example, changing the estimates of control efficiency achieved with full enclosure and robust housekeeping practices by 10 percent each could impact the resulting fugitive emission estimates for facilities employing that level of control by two to three times. These estimates could significantly impact the resulting risk estimates since most of the impact of lead emissions was due to fugitive dust emissions. While there are uncertainties associated with estimating fugitive emissions, we conclude that the methodology used in this rulemaking provided reasonable estimates of fugitive emissions for these sources. For further details, see *Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category,* available in docket ID EPA–HQ–OAR–2011–0344, which describes how we developed these fugitive emissions estimates and provides a presentation of our estimates compared to estimates submitted via the ICR and estimates reported to the TRI.

[6] For all facilities, the percent contribution of fugitive and stack emissions to modeled ambient lead concentrations has only been estimated for the model receptor representing the site of maximum lead impact.

TABLE 4—SECONDARY LEAD SMELTING FACILITY MODELED MAXIMUM AMBIENT LEAD CONCENTRATIONS CONSIDERING ACTUAL EMISSIONS [a]

[Rolling 3-month average values]

Facility name	City	State	Highest modeled lead concentration (μg/m³)	Concentration is X times the NAAQS
Doe Run Company-Buick Mill	Boss	MO	2.36	20
Sanders Lead Co	Troy	AL	2.16	10
Exide Corporation	Vernon	CA	1.14	8
Battery Recycling Co	Arecibo	PR	0.76	5
Gulf Coast Recycling, Inc	Tampa	FL	0.38	3
Exide Technologies–Canon Hollow Plant	Forest City	MO	0.47	3
Gopher Resource Corp	Eagan	MN	0.35	2
Frisco Battery Recycling	Frisco	TX	0.23	2
Exide Tech/Reading Smelter	Reading	PA	0.25	2
Quemetco, Inc	Industry	CA	0.17	1
Exide Technologies	Muncie	IN	0.15	1
Exide Technologies/B R Smelter	Baton Rouge	LA	0.14	1
Revere Smelting & Refining Corp	Middletown	NY	0.10	0.7
Quemetco, Inc	Indianapolis	IN	0.07	0.5
East Penn Mfg. Co Inc/Smelter Plt	Lyon Station	PA	0.02	0.1

[a] Values of 1 or less in the last column indicate that modeled lead concentrations are at or below the NAAQS for lead.

We also note that there were changes to our cancer, acute, and PB–HAP multipathway case study analyses (see section 3.4 of the risk assessment document) for non-lead HAP as a result of the updated risk assessment performed for the final rule. With respect to our updated cancer risk assessment, we estimate that the maximum individual risk (MIR) of cancer due to actual emissions is 50 in a million predominantly due to fugitive dust emissions of arsenic and cadmium as compared to the analysis at proposal of risk of 50 in a million but based on a different secondary lead facility. Moreover, approximately 700 people were estimated to have cancer risks above 10 in a million and approximately 80,000 people were estimated to have cancer risks above 1 in a million considering all facilities in this source category (as compared to the analysis at proposal of 1,500 above 10 in a million and 128,000 above 1 in a million). In addition, the MIR due to MACT allowable emissions remains 200 in a million predominantly from stack emissions of arsenic. The updated worst-case acute hazard quotient (HQ) value is 20 at two facilities (based on the REL for arsenic; the REL is the only available acute health benchmark value for arsenic and all other pollutants had HQ values less than or equal to 1), driven by both stack and fugitive dust emissions of arsenic (as compared to analysis at proposal of an acute HQ value of 30 based on the REL for arsenic at one facility driven by emissions from stacks). Finally, the risk assessment supporting the final rulemaking estimates that the cancer MIR values from both multipathway case study analyses (*i.e.,* in Frisco, TX and Middletown, NY; see section 3.2 of the final risk assessment document) are less than 1 in a million (as compared to an estimated multipathway MIR of 30 in a million and less than 1 in a million in the Frisco, TX and Middletown, NY multipathway case study analyses for the proposed rule). Notably, the reduction in multipathway risks resulted from updated emissions information received during the public comment period with respect to these facilities.

Taking into account all the results of the final risk assessment, and similar to the proposed rulemaking, we conclude that risks to public health due to emissions from this source category are unacceptable. Our conclusion is primarily based on risk from exposure to air-borne lead emissions but also considers other risk metrics such as cancer and non-cancer risks associated with actual and allowable stack emissions of non-lead HAPs, especially arsenic and cadmium. As mentioned above, actual lead emissions resulted in modeled concentrations of lead above the lead NAAQS at 9 of 15 facilities. Thus, we note that allowable stack emissions of lead and other HAP metals and fugitive emissions of lead must be reduced to assure that lead concentrations in ambient air beyond the facility fenceline are acceptable—that is, do not exceed the lead NAAQS (the measure of risk acceptability for exposure to air-borne lead in this rule). The fact that maximum individual cancer risks due to actual emissions are above 1 in a million also contributes to our determination of unacceptability, but to a lesser extent. While the estimated maximum individual cancer risks due to actual emissions would, by themselves, not generally lead us to a determination that risks are unacceptable, the fact that they occur along with the exceedences of the lead primary NAAQS adds to our concern about these exposures, and further supports our proposed determination that risks are unacceptable. To provide acceptable levels of risk with an ample margin of safety, we are finalizing the requirement that secondary lead smelting facilities must operate the following fugitive dust emissions sources within total enclosures that must be maintained at negative pressure at all times and vented to a control device designed to capture lead particulate: Smelting furnaces, smelting furnace charging areas, lead taps, slag taps, molds during tapping, battery breakers, refining kettles, casting areas, dryers, material handling areas managing lead bearing materials, and areas where dust from fabric filters, sweepings, or used fabric filters are processed. As further described in Section IV.C of this preamble, based on public comments, we are not adopting the proposed alternative to demonstrate compliance by monitoring lead at or near the property boundary based on a 3-month rolling average in lieu of constructing total enclosures. (See 76 FR 29056.) We are finalizing the proposed requirement for facilities to conduct fugitive emission work practices as well

as to enclose fugitive emission sources. As further described in Section IV.C of this preamble, we are also promulgating a revised list of required work practices based on a number of comments received regarding the necessity, efficacy, and safety of the work practices which the EPA proposed.

We are also finalizing the proposed requirement limiting stack lead emissions to 0.2 mg/dscm as a facility-wide emissions average and limiting stack lead emissions from any single stack to 1.0 mg/dscm.

After implementation of the controls required in this final rule, we estimate that there will be no one living at a census block centroid exposed to ambient concentrations above the NAAQS due to these facilities and the cancer MIR due to actual emissions will decrease from 50 in a million to 7 in a million.

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

Based on the technology review under CAA section 112(d)(6), the EPA proposed to change the stack lead emission limits from 2.0 mg/dscm for any individual stack to a facility-wide, flow-weighted average emission limit of 0.20 mg/dscm with a limit of 1.0 mg/dscm applicable to any individual stack. The proposed limit was based on emissions data collected from industry, which indicated that well-performing baghouses currently used by much of the industry are capable of achieving outlet lead concentrations significantly lower than the limit of 2.0 mg/dscm adopted in the 1997 MACT standard. We have considered the public comments on this issue and are adopting the limits as proposed.

Under CAA section 112(d)(6), we also proposed a fugitive emission standard requiring operation of the following process fugitive emission sources in total enclosures that are maintained under negative pressure at all times and vented to a control device: Smelting furnaces, smelting furnace charging areas, lead taps, slag taps, and molds during charging, battery breakers, refining kettles, casting areas, dryers, agglomerating furnaces and agglomerating furnace product taps, material handling areas for any lead bearing materials, and areas where dust from fabric filters, sweepings, or used fabric filters are processed. This proposed requirement was based on information collected from the industry that indicated that several operating facilities currently enclose most or all of their process fugitive emission sources, and that the ambient lead concentrations near these facilities are significantly lower than those facilities that do not have enclosures. We have considered the public comments on this issue, and have decided to adopt the requirements largely as proposed. This requirement is identical to that adopted to eliminate unacceptable risk for fugitive emissions pursuant to CAA section 112 (f)(2). However, as described in Section IV.C of this preamble, based on public comments, we are not adopting the proposed alternative to demonstrate compliance by monitoring lead at or near their property boundary based on a 3-month rolling average in lieu of constructing total enclosures. (See 76 FR 29056.) We are finalizing the proposed requirement for facilities to conduct fugitive emission work practices as well as to enclose fugitive emission sources. As further described in Section IV.C of this preamble, we are also promulgating a revised list of required work practices based on a number of comments received regarding the necessity, efficacy, and safety of the work practices which the EPA proposed.

We are also finalizing the requirement limiting stack lead emissions to 0.2 mg/dscm as a facility-wide emissions average and limiting stack lead emissions from any single stack to 1.0 mg/dscm as proposed.

We note that although we have adopted the same standards under both CAA sections 112(f)(2) and 112(d)(6), these standards rest on independent statutory authorities and independent rationales. Consequently, these standards remain independent and legally severable.

C. Other Changes Since Proposal

We received over 30 public comments on the proposed rule. After considering these comments, we are making the following additional changes to the proposal. The rationale for these and any other significant changes can be found in this preamble and in the comment response document available in the docket.

1. Stack Emission Limits

- The EPA is not adopting numerical limits for THC and D/F emissions from rotary furnaces pending further data-gathering and analysis for this furnace type.
- For units constructed after June 9, 1994, the EPA is adding a limit for THC and D/F for collocated blast and reverberatory furnaces when the reverberatory furnace is not operating, and is amending the D/F limits for blast furnaces for units that commenced construction after June 9, 1994. We also added a THC and D/F new source limit for blast furnaces that commence construction or reconstruction after May 19, 2011.

2. Definitions

- Definitions have been added for ''affected source'' and ''new source'' to clarify when the standards for new sources would apply.
- A definition of ''lead-bearing material'' has been added to the rule to clarify requirements for material handling area enclosures and work practices for fugitive emissions.
- The definition of ''material storage and handling'' has been revised to exclude transfer of raw materials in enclosed containers.
- The definition of ''plant roadway'' has been revised to exclude roadways inside total enclosures.
- The definition of ''process vent'' has been revised to specify that it includes only vents from lead processing equipment and from buildings containing lead bearing material.
- Definitions for ''leeward,'' ''windward,'' and ''natural draft opening'' have been added to the rule to clarify the differential pressure and monitoring requirements and the requirement to maintain an inward flow of air through enclosure openings.
- The definition of ''total enclosure'' was modified by specifically including modified text from 40 CFR 265.1101 and EPA method 204 ''Criteria for and Verification of a Permanent or Temporary Total Enclosure'' rather than citing the reference to the requirements for a hazardous waste containment area. We also clarified the requirement for total enclosures to be vented to a control device designed to capture lead particulates.

3. Enclosure Requirements

- The proposed requirement to maintain an in-draft velocity of 300 feet per minute at enclosure openings (see 76 FR 29072) was replaced with a requirement to maintain an inward flow of air through all natural draft openings.
- The proposed requirement for a back-up power source for the differential pressure monitors required for the total enclosures (see 76 FR 29077) was eliminated, and a reporting requirement was added to identify periods when the power was lost to the monitoring system.
- The proposed rule (see 76 FR 29072) has been modified to clarify that activities required for inspection of fabric filters and maintenance of filters that are in need of removal and replacement are not required to be conducted inside of total enclosures.

• Lead ingot product handling, storm water and wastewater treatment, intact battery storage areas, and clean battery casing plastic handling activities are not subject to the total enclosure requirement.

4. Fugitive Emission Work Practice Requirements

• The proposed maintenance requirements (see 76 FR 29073) have been modified to allow emergency repairs of ductwork or structure leaks to occur outside of enclosures if the time to construct a temporary enclosure would exceed the time to make a temporary or permanent repair. The proposed rule has been modified to extend the deadline for required maintenance and repair on total enclosures to one week after identification of any gaps, breaks, separations, leak points or other possible routes for emissions of lead to the atmosphere. The final rule also clarifies that once an item that is not otherwise subject to total enclosure requirements has been cleaned, its maintenance is no longer subject to the enclosure requirement.

• The proposed rule has been edited to allow for existing control devices to treat the ventilation from temporary enclosures constructed for maintenance purposes if the device and its permit account for increased airflow and emissions for this activity.

• The roof washing proposed work practice (see 76 FR 29073) has been removed from the list of required fugitive emission work practices.

• The specific proposed water application rate of 0.48 gallons per square yard (see 76 FR 29073) has been removed from the road washing requirement.

• The proposed battery storage area inspection frequency (see 76 FR 29073) has been changed from twice per day to once per week to maintain consistency with inspection frequency required under other regulatory programs.

• The proposed requirement to collect wash water in a container that is not open to the atmosphere (see 76 FR 29073) has been removed.

• The proposed rule (see 76 FR 29073) has been revised to clarify that lead-bearing dust must be collected and transported within closed conveyor systems or in sealed, lead-proof containers while other lead bearing material must be contained and covered in a manner that prevents spillage or dust formation.

• The proposed requirement for cleaning after an accidental release (see 76 FR 29073) has been clarified to include only those releases that exceed the CERCLA reportable quantity for lead (*e.g.,* 10 pounds).

5. Testing and Monitoring Requirements

• The performance testing requirements (see 76 FR 29074) have been modified to allow facilities to use EPA Method 12 or Method 29 for lead compounds.

• A provision was added allowing for biannual testing of lead compounds and THC for sources that demonstrate concentrations that are less than 50 percent of the applicable limit.

• An exemption was provided for THC testing if a facility has installed and is using a THC CEMS.

• The time between D/F testing (see 76 FR 29072) was changed from once every 5 years to once every 6 years, in anticipation that most facilities would be on a biannual testing schedule for lead and THC, and this schedule would allow coordination of the two required tests.

• The conditions for the performance tests (see 76 FR 29072) were changed from ''under such conditions as the Administrator specifies * * *'' to ''maximum representative operating conditions for the process''.

• The EPA also added a provision stating that sources which operate a HEPA filter or WESP system downstream of a primary particulate (lead) control device are not subject to a bag leak detection system (BLDS) requirement.

6. Other Changes

• A provision was added for sources to develop procedures to minimize emissions of THC limits during periods of startup and shutdown.

• We modified the proposed plastic separation work practice requirement (see 76 FR 29072) to include only plastic battery casing materials from automotive batteries (which comprise the vast majority of input plastics).

• The proposed recordkeeping and reporting requirements were revised to be consistent with the other changes made to the rule.

A tracked changes version of the regulatory language incorporating the changes in this action is available in the docket. Additionally, a summary of the public comments that are not in the preamble can be found in the comment response document available in the docket.

V. Summary of Significant Comments and Responses

A. Use of Lead Primary NAAQS as a Measure of Acceptability of Risk for Public Health

Commenters from both the environmental and industry sectors challenged the EPA's use of the lead primary NAAQS as a measure of acceptability of risk in this rule. The EPA disagrees with these comments. The EPA has reasonably applied the lead primary NAAQS as a measure of evaluating acceptability or unacceptability of risk from exposure to lead emissions from sources in this category. The lead primary NAAQS targets protection to children living near sources, such as secondary lead smelters, who are exposed at the level of the standard—the population most sensitive to the health impacts of these emissions. Moreover, using the lead primary NAAQS to assess acceptability of risk does not amount to an impermissible implementation of the lead primary NAAQS as industry commenters would have it. Full responses to these comments are found in the Response to Comment Document for this rulemaking, available in docket ID EPA–HQ–OAR–2011–0344.

B. Total Enclosure Requirements

Comment: Several commenters supported a requirement for total enclosures of enumerated sources of fugitive emissions. Some of those commenters did not support the alternative that would have allowed ambient monitoring in lieu of total enclosures.

According to one commenter, ''The purpose of establishing emission standards and control technology regulations is to reduce, by empirically proven technical means, the release of hazardous air pollutants into the atmosphere.'' The commenter therefore recommended that the EPA require enclosures in all instances to limit fugitive emissions.

According to another commenter, ''The non-cancer and cancer risk reductions associated with total enclosures of all lead bearing processes to reduce fugitive emissions are clearly demonstrated for all facilities in the post control scenario contained in the residual risk assessment. These benefits also have been observed based on our experience with total enclosures that are under negative pressure and vented to air pollution controls. * * * The annual geometric mean of lead measured [in ambient air near the facility] dropped from a high of 0.71 $\mu g/m^3$ (1987) to 0.06 $\mu g/m^3$ (1993) after all of the point source

and fugitive emission controls were in place. The benefits of requiring total enclosures as demonstrated by the ambient monitoring results were clearly apparent to the Department and surrounding community. Based on that experience, we do not support the alternative of allowing partial enclosures with an air monitoring requirement option in this rulemaking.''

Another commenter stated ''We do not support allowing partial enclosures with an air monitoring requirement option, since the total enclosures have been shown to be extremely effective in reducing fugitive emissions of lead and the other metal HAPs from these sources.''

One commenter indicated that neither proposed alternative (total enclosure or the ambient monitoring alternative) complies with CAA section 112(d)(6) but did state that ''additional health risk reductions would occur if a facility used total enclosure.'' This commenter also stated that the EPA should require total enclosures and work practice standards beyond those included in the proposed rule to control fugitive dust emissions of arsenic and cadmium and achieve reductions in cancer and non-cancer risks from these pollutants.

Alternatively, one commenter disagreed that total enclosure is the most effective method to reduce emissions. According to the commenter, ''Capturing emissions from secondary lead smelting sources at the point of emission and controlling such emissions through the use of baghouses equipped with secondary HEPA filtration systems represents a better alternative to constructing and maintaining total enclosures around secondary lead smelting sources.''

Response: As explained at 76 FR 29059 in the proposed rule and below, the EPA is amending the NESHAP for fugitive emissions of lead both because these emissions pose an unacceptable risk under CAA section 112(f) and because it is technically appropriate and necessary to do so pursuant to section 112(d)(6). With respect to what changes to adopt, we agree with those commenters who argued that total enclosures maintained under negative pressure are the most effective means by which to reduce fugitive emissions. Facilities in this source category that implement total enclosures as a means of controlling fugitive emissions are able to achieve significantly lower ambient lead concentrations near the boundaries of their facilities, as clearly demonstrated in the *Summary of Ambient Lead Monitoring Data Around Secondary Lead Smelting Facilities* document available in docket ID EPA–HQ–OAR–2011–0344. About half of the existing facilities currently have such full enclosures, and a few other facilities are currently constructing such enclosures. The prevalence of total enclosures in the secondary lead smelting source category suggests that this measure is cost effective and it is clearly technically feasible. There is more certainty that fugitive emissions are well controlled through the use of total enclosures than would exist with the proposed alternative to use fenceline ambient monitoring. The work practice standards in the final rule have been revised from those proposed to ensure that there are no requirements that pose safety hazards, are unnecessary to achieve emission reductions, or result in duplicative burden on regulated facilities. The work practice standards in the final rule are already implemented at some of the facilities.

Furthermore, we assumed at proposal that total enclosures would be required at all facilities regardless of which option they chose. The facilities that do not operate total enclosures are unlikely to achieve fenceline ambient concentrations at or below the lead primary NAAQS. The monitoring data just mentioned and the ICR responses indicated that the facilities which have totally enclosed their processes are generally achieving ambient concentrations substantially lower than those which have not totally enclosed. Since we based our analysis at proposal on the assumption that all facilities would have to construct total enclosures and assumed that the rule would impose those costs on all sources which have not yet installed total enclosures, our cost analysis has already accounted for the cost of total enclosure. See 76 FR at 29064 and the cost impacts memo that supported the proposed rule (docket ID EPA–HQ–OAR–2011–0344–0040 at page 8). The total enclosure requirements in section 63.544 ensure that process fugitive emissions sources and other fugitive dust emissions sources will not generate fugitive emissions that escape the facility uncontrolled. The work practice standards for process fugitive emissions sources and fugitive dust emissions sources in section 63.545 ensure that fugitive dust is not generated outside of total enclosures and that fugitive dust generated inside total enclosures is not carried outside of those enclosures.

We note that one commenter's statements appear to pertain to process fugitive emissions from secondary lead smelters that are captured by enclosure hoods and vented to a control device. We agree that enclosure hoods near sources of process fugitive emissions (*e.g.,* lead taps, charging hoppers, etc.) can be an effective method to control emissions from these sources. We also recognize that these devices are important to minimize exposure of workers to lead dust. However, we note that the enclosure hoods are not 100 percent effective at controlling these emissions, and that process fugitives that are amenable to control with hoods are not the only source of fugitive emissions from secondary lead processes. We thus disagree that enclosure hoods without total enclosures represent a better alternative for controlling all fugitive emissions.

Comment: Several commenters objected to requiring monitoring of both building pressure differential and the in-draft velocity at building openings for the total enclosures and stated that the duplicate monitoring requirements are redundant and unjustified. The commenters also requested that the EPA abandon its proposed specific minimum velocity requirement at doorway openings or lower the proposed requirement of 300 feet per minute. Two commenters stated that ''A number of the existing total enclosures in this industry do not meet the proposed 300 feet per minute in-draft velocity requirement, and their modification to achieve 300 feet per minute would require substantial expenditures.'' One commenter stated that much larger volumes of air would be exhausted from the smelter buildings and that ''the greater the volume of air exhausted, the greater the emissions of lead. Therefore increasing exhaust volumes above current levels could possibly have negative impacts.'' The commenters requested an exemption from demonstration of compliance with the in-draft requirements for access points that are normally closed. One commenter requested clarification of the use of the terms ''leeward'' and ''windward'' in the context of the differential pressure monitoring.

One commenter stated that they have demonstrated that none of these total enclosure monitoring requirements and continuous monitoring systems are necessary to reduce actual emissions of HAP. The commenter recommended continued compliance with the original 1997 NESHAP, which requires facilities to demonstrate that total enclosures were maintained under constant negative pressure by maintaining process enclosure hoods at the prescribed face velocities. As an alternative, measurements of face velocity at doorways and windows and pressure measurements at prescribed intervals would provide a viable monitoring option.

Response: We agree with the commenters that monitoring of both building differential pressure and in-draft velocity at building openings is unnecessary. However, we disagree that continuous monitoring of differential pressure is overly prescriptive. We believe that monitoring of building differential pressure is the most accurate means by which to ensure that the building is under negative pressure at all times. This method provides direct measurements that the building is indeed maintained at negative pressure. Some commenters stated persuasively that specifying doorway velocities could require substantial additional in-draft, which could cause strain to building structures, wind chill problems for workers, and pilot lights being extinguished. We have therefore not adopted the proposed requirement to measure in-draft velocity at the openings of the total enclosures but have retained the continuous differential pressure monitoring requirement. However, we have altered the differential pressure requirement from 0.02 mm of mercury to 0.013 mm of mercury to be consistent with EPA Method 204's criteria for verification of a permanent or temporary total enclosure. With regard to the comment that increased volumes of air exhausted through control devices would increase overall emissions, it is unclear to us how directing previously uncontrolled fugitive emissions through a fabric filter would increase the overall emissions from a structure.

Comment: Several commenters objected to requiring a back-up power source for the differential pressure monitors. According to the commenters, during a power outage, the ''negative pressure would not be maintained and the pressure drop monitors would simply be measuring and documenting this known and predictable fact * * *. The same information could be obtained by requiring facilities to note periods when power has been lost to the ventilation fans such that negative pressure could not be maintained.'' One commenter recommended requiring an uninterruptible power supply for the control device as well as the total enclosure monitoring system or removing the current requirement.

Response: We agree with the commenters' assessment that a back-up power source for the building differential pressure monitors is not needed. We also agree with the commenters' suggestion to include a recordkeeping provision for power outages that occur for the building ventilation systems. The regulatory text has been edited accordingly.

Comment: Several commenters objected to the enclosure requirement at all areas where fabric filters are handled or processed. One commenter stated that ''This is impractical in that all baghouses are not and cannot be located within enclosures. Therefore, in the replacement of used bag filters, there will always be a point in which the bags must be handled in order to get them into a closed container for transport.'' Two commenters stated that ''The first point at which used fabric filters are 'handled' is upon removal from the baghouse cell, usually on a catwalk running along the side of the baghouse. It is not appropriate to require all such areas to be placed within total enclosures. Best practices in the industry when replacing fabric filters are to place the used filter bags in sealed plastic bags or other closed containers in the cell while the filters are being replaced, but prior to removing the used filters to the catwalk.''

Response: We agree that the proposed requirement to enclose all areas where fabric filters are handled or processed may be impractical at times, the enclosure of a catwalk being an example. We also agree that fabric filters cannot be enclosed under the circumstances described in these comments. We have therefore revised the regulatory text to require used fabric filters to be placed in sealed plastic bags or containers before removal from the baghouse cell.

C. Work Practice Standard Requirements for Fugitive Emissions

Comment: Several industry respondents expressed concern about the proposed requirement to perform all maintenance activities for any equipment potentially contaminated with lead bearing material inside an enclosure.

Two commenters requested clarification that once an item that is not already subject to total enclosure requirements has been cleaned, its maintenance or repair is not subject to the enclosure requirements. Both commenters also gave an example of circumstances where the best course of action would be to make an immediate repair on a leak in an elevated duct rather than wait until a temporary structure was constructed. One commenter expressed concern that inspection and maintenance of filters that are in need of removal and replacement would need to be performed within a total enclosure.

Two commenters stated that 72 hours to make repairs to any gaps or leak points in enclosures or structures was not feasible to implement. One commenter suggested that the rule ''be changed to require initiation of repairs within 24 hours of discovery and completion of repairs as soon as practicable. Rather than seeking and obtaining approval for extensions from the Administrator, the source should be required to file and to keep a record listing when the problem was discovered, when the repair was initiated and when the repair was completed.'' Another commenter stated that ''the presence of leak points is irrelevant to collection as long as the size and location of these leak points does not change over time. Once a facility documents that any total enclosure criteria (for negative pressure) are met, the presence of existing leak points is irrelevant.''

One commenter requested that the EPA allow facilities to route emissions from partial or temporary enclosures to control devices that meet the performance requirements stated in the rule. According to the commenter, ''This compliance option is requested, because as written, the provisions would require manufacturer's specification alone and not allow use of an otherwise compliant control device.''

Response: With regard to the comment that the proposed maintenance practices were overly prescriptive, we have revised the regulatory text to require performance of maintenance ''in a manner that minimizes emissions of fugitive dust'' that includes several options to control fugitive emissions. With regard to the comment pertaining to inspection and maintenance of fabric filters, we have edited the regulatory text such that this enclosure requirement does not apply to inspection and maintenance practices for fabric filters.

We also agree with commenters that making prompt and timely repairs for leaks is often more effective than first constructing a total enclosure around the leak. However, we believe that the formulation to initiate repairs ''as soon as practicable'' is too vague. We have edited the regulatory text to require completion of repairs to enclosures within one week and inserted language allowing facilities to initiate immediate repairs of ductwork or structure leaks without an enclosure provided that the time necessary to construct a temporary enclosure would exceed the time necessary to make a temporary or permanent repair. This change ensures that the requirement is technically practicable and the most cost-effective means for fixing leaks while minimizing the period during which the leak causes emissions.

We disagree with the commenter that the presence of a leak point is irrelevant to collection as long as the size and location of these leak points do not change over time. Total enclosures are designed with openings of specific size and location to provide appropriate airflow into a building and to maintain the negative pressure at all locations. Multiple leak points at different locations of non-uniform size would be difficult to measure and document. It would also be difficult to ensure that the building negative pressure is uniform at all locations.

We agree with the commenter that facilities should be allowed to route emissions from partial temporary enclosures to existing control devices that meet the performance specification stated in the rule provided the control device has the capability to accommodate the additional air flow and that its permit accounts for the additional air flow and emissions. The regulatory text has been edited accordingly.

Comment: Several commenters expressed concerns about the requirement in the proposed rule for cleaning of building rooftops. The commenters stated that the EPA did not provide a basis to demonstrate that roof washing is effective or necessary. One commenter stated that roof cleaning was unnecessary to operate in compliance with the current lead NAAQS, and that current work practices are sufficient to meet the standard. Several commenters also stated that roof cleaning is potentially dangerous to workers and in some cases not possible due to the rooftop construction and weather conditions. Several commenters noted that the requirement unnecessarily applied at all times, even when natural precipitation makes cleaning unnecessary.

Response: We agree that the proposed roof washing requirement may not be feasible and may cause worker safety hazards in some cases, and we have therefore removed this activity from the list of required fugitive emission work practices.

Comment: Several commenters opposed the specific requirement for a mobile vacuum sweeper used for pavement cleaning when a water flush is used. The commenters stated that the EPA provides no justification for the minimum water application rate of 0.48 gallons per square yard of pavement cleaned or evidence that equipment currently used could achieve this rate. The commenters suggested that this specific requirement be replaced with a ''requirement that pavement be periodically cleaned, leaving methods, and minimum water application rates to individual facilities and, as relevant, their permitting authorities.'' According to the commenter, ''EPA should further exempt pavement cleaning on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow.''

Two commenters also expressed concerns that the rule requires pavement cleaning in the battery breaking, furnace, refining and casting areas when a total enclosure is not used. According to the commenters, certain locations within these areas are not capable of being cleaned on a routine basis due to safety, access, or other reasons. The commenters give an example of paved areas under process equipment as being an area that is not safe to access during operation of the equipment. One commenter also stated that roadway cleaning and washing of truck tires and undercarriages are redundant requirements with no incremental benefit.

Response: We agree with the commenters' suggestion to remove the minimum water application rate requirement from the regulatory text. We note that the proposal did include an exemption for cleaning on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow. That exemption remains in the final rule. See 40 CFR 63.545(c)(2).

With regard to the comments regarding pavement cleaning requirements when total enclosures are not used, we note that the final rule requires total enclosures rather than including them as an option. Furthermore, it is our understanding that in the cases where mobile sweeping or wet washing equipment is not feasible (*e.g.,* underneath process equipment), facilities can utilize hand held vacuum equipment to clean these areas. Therefore, we do not believe it is appropriate to exempt these areas from the cleaning requirements since these areas contain fugitive lead which can be emitted and reach human and environmental receptors.

We disagree with the commenter that roadway cleaning and undercarriage washing are redundant requirements. While truck tires may be a significant source of lead bearing material on the roadway, we understand that they are not the only source. Therefore, we have maintained both requirements in the final rule.

Comment: One commenter recommended modifying the requirement to pave ''all areas subject to vehicle traffic'' to ''all areas subject to *routine* vehicle traffic.'' The commenter noted that areas not subject to routine traffic do not have the potential to generate significant quantities of fugitive dust and that paving these areas would increase the amount of storm water generated.

Response: We agree with the commenter that there may be some instances where paving and cleaning a roadway is impractical. We have included an exemption in the rule for limited access and limited use roadways that access remote, infrequently used locations on the facility's property. See 40 CFR 63.545(c)(2).

Comment: Two commenters objected to the proposed frequency of inspection of the unenclosed battery storage areas. One commenter ''finds this requirement to impose an administrative burden of minimal value.'' According to the commenter, ''Spent lead acid batteries, even if accidentally broken and leaking, pose minimal potential for generation of fugitive dust containing HAPs. Inspection of these areas is typically required on a weekly basis as part of the facilities' Resource Conservation and Recovery Act obligations and such frequency is sufficient to satisfy the intent of this proposed rule as well.'' One commenter suggests that identifying and mitigating leaks within 72 hours will prevent generation of fugitive lead emissions. The commenter also states that it is unclear whether batteries stored in partial enclosures are exempted from the twice daily inspection requirement and proposes the following regulatory language incorporating both of these issues.

> You must inspect any batteries that are not stored in a partial or total enclosure once each day and move any broken batteries to a partial or total enclosure within 72 hours of detection. You must also clean residue from broken batteries within 72 hours of identification. Storage of batteries in trucks and railcars consistent with Department of Transportation requirements are specifically exempted from these requirements.

Response: We agree with the commenters that requiring inspection of these areas on a twice daily basis is not necessary. We have modified the regulatory text to require inspection of these areas once per week—consistent with requirements implementing the hazardous waste subtitle of RCRA (see 40 CFR 264.174 and 264.1101(c)(4) (and the EPA sees no reason to deviate from these long-standing requirements here, given that they were adopted to be ''protective of human health and the environment'' from management of hazardous waste)—with removal of

broken batteries within 72 hours of detection. We have also clarified that the inspection requirement does not apply to battery storage areas that are in a total enclosure. We do not believe that an exemption for storage of batteries in trucks and railcars is necessary since the inspection frequency was reduced to once per week.

Comment: One commenter objected to the requirement to collect wash water in a container that is not open to the atmosphere. The commenter stated that ''Covering of these collection tanks is not necessary because lead dissolved and/or suspended in water does not have a pathway for becoming a fugitive emission.''

Response: We agree with the commenter that so long as the contents in the container are wet, there should be no fugitive emissions. We have removed the requirement to collect wash water in a sealed container.

Comment: Two commenters requested changes to the requirement to transport lead bearing materials in sealed leak-proof containers. One commenter proposed that containers be ''covered'' rather than ''sealed leak-proof'' and that an exemption be made for off-road dump trucks. The suggestion was made because ''sealed leak-proof containers * * * cannot be attained, but covers can be for most trucks used in such transport * * *. no approved sealing covers are made for the 30-ton, 6-wheel, off-road dump trucks used at the facility.'' One commenter supported the requirement for transporting lead bearing materials within an enclosure or in a sealed container, but suggested that lead bearing materials with little potential for production of fugitive lead dust from transportation should be excluded, including intact batteries, raw materials with lead content that is not considered recoverable such as iron, caustic, coal, wood, sulfur and other similar materials, and products from the recycling process.

Response: We agree that the proposed requirement for material transport should be modified. The intent of the proposed requirement was to prevent fugitive lead dust formation outside of a total enclosure. We have therefore modified the requirement at 63.545(c)(7) to read as follows:

''You must transport all lead bearing dust within closed conveyor systems or in sealed, leak-proof containers, unless the transport activities are contained within an enclosure. All other lead bearing material must be contained and covered for transport outside of a total enclosure in a manner that prevents spillage or dust formation. Intact batteries and lead ingot product are exempt from the requirement to be covered for transport.''

The definition of lead bearing material in the rule clarifies that lead bearing materials must contain at least 100 ppm of lead (measured via Toxicity Characteristic Leaching Procedure (EPA Method 1311) lead test results <5 mg/l). Intact batteries and lead ingot product are excluded from this requirement.

Comment: Some commenters agreed that the secondary lead facilities operate a separation process at their battery breakers to separate polypropylene battery case material as a valuable recyclable commodity. However, not all spent lead acid batteries are amenable to separation. Certain battery types such as small sealed-lead-acid batteries and certain industrial lead-acid batteries are fed into the blast furnace without ever passing through the facility's battery breaker. These batteries are either too small or too large to be broken by the automated battery breaking equipment. One commenter requested that the EPA estimate the cost of the systems that would be required. Another commenter offered that mandatory separation could be used for facilities that are not meeting TEQ limits as one of several options to reduce emissions. Two commenters stated that the current dioxin emission levels pose no incremental health risk presented by background dioxin and that there is no valid justification for imposing this burden.

Response: Based on these comments, we have revised the proposed plastics separation work practice requirement to be specific to automotive batteries, which should be amenable to separation based on current practices used in the industry. We agree with the commenters that some industrial batteries are not easily processed in battery breakers and that the retrofits or additional equipment required to process such batteries are not justified since automotive batteries make up the vast majority of lead acid batteries processed at these facilities. We believe that plastics separation from automotive batteries is sufficient to minimize emissions of organic HAP. We further note that the use of battery breakers to separate plastics from automotive batteries is clearly a development in practices that limits emissions of organic HAP, including dioxin, and is therefore an appropriate part of a standard under CAA section 112(d)(6).

D. Emission Standards for Organic HAP From Rotary Furnaces

Comment: We received several comments on the proposed D/F and THC MACT floor limits for the rotary furnace subcategory that were based on data (two test runs, see 76 FR at 29049) from the slag-processing rotary furnace at RSR's Middletown, NY facility. One commenter stated that rotary furnace standards should not be based on emissions that are not from stand-alone rotary furnace operations. The commenter stated that the EPA should not derive standards for rotary furnaces from performance of a different source type or subcategory that includes a furnace combination (*i.e.,* reverberatory/short rotary furnace). The commenter also contends that there are insufficient data available to establish limits for D/F and THC from rotary furnaces. The commenter contends that the EPA used one source that is not representative of or similar to true rotary furnace operation to establish the limits for ''rotary furnaces.'' The commenter stated that the emissions limit established in the proposed rule is arbitrary because it is not based on operations of rotary furnaces using lead bearing materials from lead acid batteries as feedstock.

The commenter notes that RSR's Middletown, NY facility, whose test data were used as the basis for the THC and D/F limits, only uses their rotary furnace to process one type of lead bearing material, reverberatory slag, and this furnace is not representative of the full capabilities of rotary furnace operation. The commenter notes that JCI's Florence Recycling Center plans to utilize stand-alone rotary furnaces to process lead paste, battery components, and ''other materials with recoverable quantities of lead.'' The commenter further notes that the emissions from RSR's short rotary furnace (SRF) and drying kiln are combined, and it is unclear from information in the docket whether testing of the SRF occurred at a location prior to the combination of these exhaust streams.

The commenter also stated that JCI and RSR differ in raw materials used in the facilities' operations. RSR's Title V application for its Middletown facility indicates that RSR may process automotive, industrial, and specialty-type lead-acid batteries as well as lead bearing materials received from lead-acid battery manufacturing plants and scrap metal in its reverberatory furnace. JCI's furnace feed is from automotive and marine batteries and from lead bearing materials from other JCI facilities. The commenter contends that, since the EPA considered no data representative of a rotary furnace operation such as that which will be operated at the JCI Florence Recycling Center, a numeric limit for this category cannot be assigned.

One commenter also stated that the stack test for RSR's SRF that was used

to develop D/F and THC emission limits for ''rotary furnaces'' included only two successful test runs and therefore must be considered inadequate for setting emission limits since 40 CFR 63.7(e)(3) requires three test runs for compliance demonstration purposes.

One commenter supports the individual stack emission limits for THC and D/F but provides comment on the EPA's consideration of statistical variability for the rotary furnace subcategory. The commenter stated that the Upper Prediction Limit (UPL) tends to inflate the variability because the statistical procedure attempts to accommodate the highest emission measurement at the same facility and not necessarily the variability between facilities as the MACT floor is intended to achieve. Additionally, the UPL is very dependent on the number of valid samples. The commenter contends that, when a suitable number of samples have been collected, the 99 percent confidence limit (CL) represents a range for which there is 99 percent certainty that the interval contains the true mean. The commenter suggests that caution be used when determining a MACT floor from limited test data and that the 99 percent CL is more appropriate for this particular industry.

One commenter noted that the EPA did not consider a secondary lead smelting facility in Puerto Rico that operates a stand-alone rotary furnace. The commenter contends that even if it were appropriate to set MACT floor emission rates or standards for rotary furnaces, the EPA would have to obtain and consider data from the Puerto Rico facility. According to the commenter, failure to consider data from the facility ''undermines the RTR Proposed Rule and any attempt by EPA to establish emission standards for the rotary furnace subcategory.'' The commenter contends that the EPA should issue a separate ICR for the Puerto Rico facility and publish a supplemental notice of proposed rulemaking that takes into account the emission information for this facility.

Response: The EPA agrees that rotary furnaces fueled by natural gas could be different from rotary furnaces operating using different fuel types, and that rotary furnaces processing slag could be different types of rotary furnaces than those processing lead acid batteries. More basically, the EPA simply has insufficient data on which to promulgate organic HAP standards for rotary furnaces. The proposed standards for THC and D/F were based on less than one single complete test, consisting only of two test runs from the natural gas fueled rotary furnace processing slag. See 76 FR at 29049–29050. (A complete test consists of three test runs.) When calculating variability using a limited dataset (in this case, the two test runs) the effect of variability can be substantial. Id. The proposed THC and D/F standards likewise were based on two test runs and similarly reflected enormous statistical variability due to the limited data. Id. at 29049/1. The EPA does not believe that these data are sufficient to adopt a standard even for the rotary furnace which was tested, much less a rotary furnace which may be different. Accordingly, we are not adopting standards for organic HAP emissions from rotary furnaces at this time and instead we intend to issue CAA section 114 information requests to sources operating rotary furnaces to obtain more representative emission data and plan to propose standards for organic HAP in a future action. However, we note that the lead emission standards included in this action do apply to rotary furnaces processing slag or lead acid batteries.

E. The EPA's Risk Assessment Supporting the Proposed Rule

Comment: Two commenters stated that the EPA's methodology is unreliable and incorrect. The commenters stated that the EPA overestimated the baseline fugitive emissions for the Exide Frisco facility whose (faulty) estimates then became the basis for estimating all other facilities' fugitive emission rates. The commenter stated that the EPA scaled Exide's reported fugitive emissions of 0.296 tpy for the blast and reverberatory furnace fugitive emissions to 0.32 tpy based on the assumption that fugitives would not be on the same operating schedule as process emissions. The commenter contends that this scaling is inappropriate since furnace fugitives can only occur when the associated process furnaces are operating. The commenter further stated that the EPA also double-counted the fugitives of 0.32 tpy by assigning the value to each of the blast and reverberatory furnaces, despite the fact that Exide reported the value as combined emissions for both the reverberatory and blast furnace.

Response: The commenter is correct in both respects. The EPA has accordingly adjusted its calculation of the fugitive emissions from Exide's Frisco facility (thereby reducing the facility's fugitive dust emissions estimate) and adjusted the emissions estimates for each facility to reflect the revised estimate of the Frisco facility. The resulting risk results have also been adjusted. We note that the updated emissions estimates and risk results did not substantively alter our decisions under section 112(f). The modeling showed 9 of 15 facilities above the lead NAAQS, down from 12 of 14 facilities at proposal. The maximum modeled lead concentration in the source category decreased from about 23 times the NAAQS to about 16 times the NAAQS. We still find that risks from this source category are not acceptable and that revisions under section 112(f)(2) are therefore required, and further find that it is necessary under section 112(d)(6) to revise the standards for fugitive emissions considering the developments in cost-effective control technologies for their control.

Comment: Three commenters stated that the EPA's multipathway risk estimates are incorrect because they relied on incorrect dioxin and furan emissions from Exide's Frisco, Texas facility. The commenters contend that a dioxin and furan test conducted in October 2010 at the Frisco facility revealed an emissions rate of 6.2E–08 tons/year on a toxic equivalency quotient (TEQ) basis, 69 times lower than the estimate used by the EPA. One commenter noted that the exact effect that the difference in emissions would have on the calculated risks is unknown since the EPA has not placed the full methodology behind its multipathway risk calculations in the record. However, the commenter noted that assuming the relationship between emissions and risk is approximately linear, the EPA's calculated risk would be approximately 69 times lower than that estimated at proposal and less than 1 in a million. The commenter further requested that the EPA disclose its multipathway risk calculation methodology and allow for public notice-and-comment. Another commenter stated that the EPA's overestimation of dioxin and furan emissions may lead to unwarranted public concern about the Frisco facility. The commenter requested that the EPA include a clarifying explanation regarding the Frisco emissions data and the lower multipathway risk in the final rule as well as in the risk assessment document.

Response: As noted in previous responses, the final risk assessment reflects updated emission information received during the public comment period for the proposed rule. We also note that the updated dioxin/furan test data were not made available to the EPA, despite repeated requests, until June 2011. With respect to the estimated emissions of D/F, the commenter is correct that EPA overestimated these emissions at proposal by a factor of 69 for the reasons stated. Considering this updated emissions information, the EPA

estimates that multipathway risk associated with the Exide Frisco facility is less than 1 in a million (and so contributes very little to the estimates of risk posed by this source category, and is not a driver of the determination that risks from this source category are unacceptable). See *Residual Risk Assessment for the Secondary Lead Smelting Source Category,* available in the docket, at pages 32–33.

This additional information does not warrant any reopening of the proposed rule or comment period, however. First, the EPA fully disclosed its multipathway risk methodology; the commenter's assertions to the contrary are simply mistaken. Thus, the risk assessment document along with its appendices was available in the docket for the proposed rulemaking and describes in detail the methodology used in the assessment. See the *Residual Risk Assessment for the Secondary Lead Smelting Source Category,* at page 10, available in the docket. Also see docket ID EPA–HQ–OAR–2011–0344–0037 for a thorough discussion of the EPA's human health multipathway risk assessment methodology.

Second, the new information reinforces the tentative conclusion the EPA reached at proposal: risks associated with emissions of dioxin and furans from the secondary lead source category are not primary drivers in the unacceptable risks from this source category (*i.e.* dioxin and furan emissions are not the reason that risks from secondary lead smelter emissions are unacceptable). See 76 FR at 29055/2. The new analysis reinforces that risks posed by dioxin and furan emissions are acceptable, since emission levels are 69 times less than estimated at proposal (when risks from CDD and CDFs were already considered to be at an acceptable level). Thus, this already acceptable level of risk is less than estimated and less than one in a million. The EPA does not agree that further comment on this issue is warranted, since further comment would not have a practical effect on the rule.[7]

Comment: One commenter stated that the EPA inappropriately summed risks from the inhalation and multipathway risk assessments at the Exide Frisco facility. The commenter noted that it is impossible for the person with the highest chronic inhalation cancer risk to also be the same person with the highest individual multipathway cancer risk since the two MIR values are location dependent and are at locations that are widely separated. The commenter further noted that the EPA has indicated in other contexts that when populations are exposed via more than one pathway, the combination of exposures across pathways must also represent a reasonable maximum exposure.

Response: The EPA disagrees with the commenter. While highly unlikely (and noted as being highly unlikely in the risk assessment document), it is theoretically possible for the person with the highest chronic inhalation cancer risk to also be the same person with the highest individual multipathway cancer risk. The EPA notes that the multipathway risk assessment does not provide a specific location for the MIR; thus, it is possible (although highly unlikely) that the person with the highest inhalation MIR is also consuming fish (at the fish ingestion rates described in the multipathway report) from the theoretically contaminated lake. That being said, however, we note that considering updated emissions information for this facility, updated multipathway results indicate multipathway risk associated with the Exide Frisco facility are well below one in a million. Considering these updated results, multipathway risk would not appreciable add to any inhalation risk associated with this facility.

Comment: Commenter 94 stated that the EPA improperly calculated the inhalation cancer MIR for the Exide Frisco facility in a vacant field to the north of the facility within the facility's property line. The commenter noted that the lifetime cancer risk of the MEI cannot be at a location within the facility property line.

Response: The commenter is correct and the EPA has corrected the receptor location resulting in a change in the results in the final risk assessment. The MIR for this facility is now located at a populated census block (based on the 2001 census).

F. Miscellaneous Changes to the Regulatory Text

Comment: Three commenters requested that the EPA replace the term ''modified source'' with ''reconstructed source.'' Neither the proposed rule nor the EPA's general Part 63 regulations define the term ''modified source.'' The term is defined in the CAA, but that definition would require a source to install maximum achievable control technology and impose a ''new source'' requirement like CEMS on a modified source, rather than appropriately imposing the existing source provisions that do not require installation of a CEMS.

Response: The term ''modified source'' appeared in the proposed rule at 40 CFR 63.548(l) under the proposed requirement to install a CEMS for measuring lead emissions on all new or modified sources. We agree with the commenter that the terminology of ''reconstructed'' source would be more appropriate for this requirement and have changed the regulatory language accordingly.

Comment: Three commenters requested clarification of the term ''affected source'' as used in the proposed rule. The proposed rule uses the terms ''new sources'', ''existing source'' and ''modified source'' without clarifying whether it is referring to secondary lead smelters generally, or to potential emissions sources within secondary lead smelters. There is a seeming contradiction between the use of the term ''affected source'' in the proposed rule and the definition in 40 CFR Part 63, Subpart A general provisions. One commenter also understands that the terms ''new sources'' and ''existing sources'', as used in the proposed rule, are consistent with the definitions as used in CAA § 112(a). The commenter ''understands EPA intends to address any addition of units to an 'existing source' consistent with the provisions of the CAA'' and understands that the analysis as explained in *Nine Metal Fabrication and Finishing Area Source Categories, 40 CFR Part 63 (6X) NESHAP, Questions and Answers,* April 2011 would apply with respect to implementation of any amendments to subpart X requirements. The Q&A explains that the ''CAA uses the word 'source' to mean the entire facility in terms of the classification of 'new' vs. 'existing' whereas for the Subpart 6X rule, what is referred to as the 'affected source' is actually one of the processes at the facility''.

Response: The EPA has clarified the application of these terms in the final rule. The definition in 40 CFR part 63, subpart A requires each relevant standard to define the ''affected source,'' as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to CAA section 112 unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation problems and why the

[7] The comment that EPA's standards for dioxin and furans do not result in significant risk reduction is misplaced given that the EPA is not adopting any risk-based (*i.e.,* section 112(f)(2)) standards based on the need for reduction of emissions of dioxin and furan.

different definition would resolve those problems. We have adopted a definition of ''affected source'' in this rulemaking as any of the listed individual sources at a secondary lead smelter. This application of the term ''affected source'' is the same as was used in the 1997 NESHAP for secondary lead. The term ''affected source'' is used in the final rule primarily in the context of new sources. This definition is appropriate for the secondary lead source category because the chief source of emissions from these facilities are the furnaces, and as these furnaces are replaced or reconstructed, the replacement equipment would be subject to the standard for a new source.

A ''new source'' has also been defined as any affected source at a secondary lead facility that undergoes construction or reconstruction after May 19, 2011, the date of the proposed CAA section 112(f)(2) and 112(d)(6) rules. A building that is constructed for the purpose of controlling fugitive emissions from an existing source is not considered to be a new source because it is effectively a control device for fugitive emissions.

Comment: One commenter noted that the last sentence in the current definition of ''Materials storage and handling area'' has been deleted in the proposed definition. This sentence reads: ''Materials storage and handling area does not include areas used exclusively for storage of blast furnace slag.'' The commenter disagreed with the EPA's assessment that this is a minor change. ''EPA should provide an explanation of what changed circumstances justify a new rule.'' Two other commenters requested that the definition be modified to exclude the transfer of raw materials of any type in enclosed conveyors. The commenter stated that ''as currently worded, the enclosure requirement proposed would apply to handling of fabric filter dust in enclosed conveyors, containers, or in wet slurried form, which is unnecessary.'' The commenter suggested revising the definition to include the following: ''Material storage and handling area shall not include any closed containers or enclosed mechanical conveyors.''

Response: A definition of ''lead bearing material'' has been added to the final rule. Rather than include or exclude any one particular material in the definition of ''materials storage and handling area'' based on the originating process, this definition establishes lead content as the criterion for determining whether materials must be handled in such a manner as to prevent lead dust formation. The definition of ''materials storage and handling area'' remains essentially unchanged from the definition in the proposed rule.

Fugitive dust formation has been identified as the major contributor to ambient lead concentrations near secondary lead smelters. Piles where lead bearing materials are stored were identified as one of the major sources of fugitive lead emissions. However, there was no definition for lead-bearing material in the proposed rule that could be used to make a determination of which materials needed to be handled in a manner that prevents dust formation. By adding a definition of ''lead bearing material'' to the rule, we have clarified and quantified the definition of ''materials storage and handling area.''

The EPA is using the Toxicity Characteristic Leaching Procedure (TCLP), EPA Method 1311 to measure which materials are lead-bearing, and using the characteristic level of 5.0 mg/l (in the extract from the test) as the specific level for being lead-bearing. See 40 CFR 261.24. This assures that only materials with at least 100 ppm total lead will be considered to be 'lead-bearing'. See EPA Method 1311 section 2.2 which describes that the liquid to solid ratio of material tested should be 20:1 (*i.e.* 5 mg/l in the TCLP extract is equal to at least 100 ppm in the material being tested). The specific definition of lead bearing material chosen ensures that materials that contain relatively substantial amounts of lead (0.01 percent) are included while minimizing additional testing burden for facilities who must determine what does or does not meet the definition. Testing burden is minimized because facilities already use the TCLP to determine whether or not the wastes they manage are hazardous, pursuant to subtitle C of the Resource Conservation and Recovery Act. Imposing a different threshold for defining material as ''lead bearing'' could thus impose duplicative or conflicting requirements between subpart X and other regulatory regimes. Furthermore, the TCLP is a test protocol which includes a grinding step, which is a conservative measure of determining whether a material could generate fugitive emissions. See Method 1311 steps 7.1.3 and 7.2.10.

To address the concern that fabric filter dust in enclosed conveyors, containers or wet slurries must be additionally handled only inside an enclosure, we have added an exemption from the enclosure requirement for materials that are ''lead bearing'' but are not expected to generate fugitive lead dust. While these materials do contain lead in amounts that could otherwise meet the definition of lead bearing material, they are either in a stabilized form that will not create fugitive dust or in a container that prevents fugitive dust formation. These materials include: lead ingot products, stormwater and wastewater, intact batteries, lead bearing material that is stored in closed containers or enclosed mechanical conveyors, and clean battery casing material.

Comment: One commenter requested a change to the definition of ''plant roadway'' specifically to exclude finished lead product storage areas and roadways or traffic areas located within enclosed buildings.

Response: We accept the commenter's suggestion to exclude roadways or traffic areas located within enclosed buildings from the definition of ''plant roadway.'' However, we do not believe that it is appropriate to exclude finished lead product storage areas since these areas may be located in close proximity to areas that may require cleaning (*e.g.,* slag storage areas).

Comment: One commenter requested a change to the definition of process vent. As currently drafted, it appears overly broad and could lead to confusion concerning the ventilation systems that must be tested.

Response: We have made revisions to the regulatory text to clarify that the term ''process vent'' includes various process vents and vents from buildings containing lead bearing material. Vents from office or other non-process areas are not considered to be process vents.

Comment: Two comments were received on the terminology used for a lead CEMS. According to the commenter, ''Paragraph 63.548(m) specifies that lead CEMS be 'continuous emission *rate* monitors.' The standard is a concentration standard, not an emission rate standard, so the term ''continuous emission *rate* monitor'' is not appropriate''. Since flow and concentration monitors are needed to calculate compliance with the flow weighted average, one commenter recommended a requirement for flow and concentration monitors rather than citing a type of monitoring system that is not applicable to the standard.

Response: We agree with the commenter that the term continuous emissions *rate* monitor is not appropriate. We have replaced the term ''continuous emissions rate monitor'' with ''continuous emissions monitoring system.''

Comment: Two commenters noted that the term ''accidental release'' is not defined in the rule. The commenters recommended that the EPA use the CERCLA reportable quantity threshold of 10 pounds to define an accidental

release of lead-containing dust. Two commenters recommended that the requirement to initiate cleaning within one hour of a release be changed to require that the facility initiate cleaning activities within one hour *after discovery* of an accidental release.

Response: We accept the commenters' suggestion to use the CERCLA reportable quantity threshold of 10 pounds to define an accidental release of lead-containing dust. We also accept the commenters' suggestion to require initiation of cleaning within one hour of discovery of an accidental release.

Comment: One commenter recommended that the definition of ''maintenance activity'' be changed from ''any of the following routine maintenance and repair activities that generate fugitive lead dust:'' to ''any of the following maintenance and repair activities *when they* generate fugitive lead dust:''

Response: We do not agree with the commenter's proposed change to the definition of ''maintenance activity.'' If this definition was adopted, the facility would be allowed to proceed with a maintenance activity and then, if the activity began generating dust, controls would need to be adopted but otherwise-controllable lead emissions would be released to ambient air. However, we have modified the definition to read ''any of the following routine maintenance and repair activities that could generate fugitive lead dust.'' This definition ensures that proactive, rather than reactive, actions would be taken for activities with the potential to generate lead dust.

Comment: One commenter stated that a definition of lead-bearing material should be added and should include such characteristics as the material should be semi-granular, have a lead content of greater than 10 percent, and produce visible fugitive emissions when handled or transported.

Response: As noted above, we have added a definition of lead-bearing material to the regulatory text. However, we believe that a 10 percent lead content is too high. We have defined lead-bearing material in the rule as material with lead content of 5 mg/l or greater as measured by the TCLP (Method 1311), which means that materials would need to contain at least 100 ppm of lead. This is equivalent to the toxicity characteristic level for a hazardous waste containing lead as defined at 40 CFR 261.24.

Comment: One commenter noted that 40 CFR 63.544(d) of the proposed rule makes reference to the requirements in subsections (d)(1) through (d)(4). However, as the commenter points out, there are eight subsections applicable to 40 CFR 63.544(d) and subsection (d)(2) further refers to meeting requirements through (d)(8).

Response: The EPA agrees with the commenter and has made the suggested change in the regulatory text at 40 CFR 63.544(d).

Comment: One commenter noted that proposed 40 CFR 63.543(i) requires that sources conduct testing for process vents, ''* * * under such conditions as the administrator specifies based on representative performance of the affected source for the period being tested.'' The commenter requested that the EPA replace this ''cumbersome'' language with ''* * * under normal operating conditions.''

Response: We have modified the text to require sources to conduct testing ''under maximum representative operating conditions for the process.'' The term maximum is included to ensure that the testing occurs during a time period of full production at the facility that is representative of normal operation. This language allows sources to develop test conditions which approximate the variability they can reasonably encounter during normal operation. Parametric monitoring requirements, based on parameters measured during the performance test, would then reasonably reflect this operating variability and afford the source flexibility in its day-to-day operation. *Cf. Cement Kiln Recycling Coalition* v. *EPA,* 255 F.855, 866–67 (DC Cir. 2001) (upholding use of such data to set MACT standards under CAA section 112(d)(3)).

Comment: One commenter noted that Table 3 of the proposed rule is improperly labeled, ''table 3 to Subpart X of Part 60—Toxic Equivalency Factors.'' As the commenter points out, the table is included in 40 CFR part 63, not 40 CFR part 60.

Response: The EPA agrees with the commenter and has made the suggested change to Table 3 of the proposed rule.

Comment: Two commenters pointed out that there is a typographical error in Equation 2 of the proposed rule at 40 CFR 63.543(c). The definition of the term C_{ELI} includes the word lead, though the equation is not applicable to lead.

Response: The EPA agrees with the commenter and has adjusted the definition of the term C_{ELI} in Equation 2 of 40 CFR 63.543(c) accordingly.

G. Emission Testing Methods and Frequency

Comment: Two commenters stated their support for biannual testing for well performing facilities. One commenter contends that the East Penn facility currently conducts biannual testing for lead and still maintains compliance with the lead NAAQS and applicable subpart X emission standards. The commenter further argued that the EPA has not demonstrated any environmental benefits associated with annual testing versus biannual testing for well controlled facilities. The commenter contends that the East Penn facility has made strategic decisions to invest capital resources to reduce lead emissions and that the removal of the biannual testing exemption would unnecessarily increase the annual operating costs of the facility.

Response: We agree with the commenter that a biannual testing exemption for well performing facilities can be retained in this NESHAP. We have added an exemption for any stacks that report a lead concentration of 0.1 mg/dscm or lower allowing biannual testing. The concept of decreased testing frequency for well-performing sources was discussed in the proposal as a part of the fenceline monitoring approach (see 76 FR at 29057).

Comment: Two commenters disagreed with the annual testing requirement for total hydrocarbons (THC). One commenter stated that since the risk assessment did not identify significant risks drivers among the organic HAP represented by THC, the THC testing should be conducted concurrently with the dioxin and furan tests every 5 years with continuous compliance demonstrated via afterburner temperature monitoring. Another commenter stated that requiring annual THC tests is redundant and unnecessary if a CEMS is installed and operated per 40 CFR 63.543(k).

Response: We disagree with the commenter that THC testing should be conducted on the same schedule as dioxins and furans. Testing for THC is substantially less expensive than testing for dioxins and furans and we do not believe annual THC testing presents an unnecessary burden. However, we have added an exemption allowing biannual testing of THC for any stack that reports concentrations that are less than half of the applicable emissions limit. Annual stack testing is obviously not required if a THC CEMS is used.

Comment: Three commenters stated that the EPA should allow facilities to use EPA Method 12 for lead compounds to calculate compliance with the process vent limitations in order to be consistent with testing requirements that exist in many facility permits.

Response: We agree that facilities should be given the option of using EPA

Method 12. The regulatory text has been edited accordingly.

Comment: Three commenters stated that the BLDS exemption for baghouses equipped with HEPA filters should be retained. One commenter stated that to install BLDS's on HEPA filtered stacks is excessive and unwarranted. The commenter also believes that annual stack testing for sources equipped with HEPA filtration is not necessary. Another commenter argued that the cost associated with using BLDS is not commensurate with their limited ability. The commenter stated that BLDS's are inherently reactive whereas baghouses equipped with HEPA filtration actually prevent emissions in the event of a bag failure. Further, the commenter argued that HEPA secondary collection pressure differential is an effective method to monitor baghouse performance. The commenter contends that the BLDS requirement will pose an unnecessary and redundant burden on facilities that proactively chose to install HEPA filtration systems and that the proposed revisions are a disincentive for facilities to install HEPA filters. Finally, the commenter stated that the proposed BLDS requirement and the elimination of the BLDS exemption for HEPA filters are arbitrary and not supported by test data.

Response: We agree with the commenters that baghouses equipped with HEPA filters do not need bag leak detection systems as well. The measurement of pressure drop across a HEPA filter provides the indicia of superior performance for determining continuous compliance. However, we disagree that sources should be exempt from annual stack testing based solely on the use of a HEPA filter. The emission standard includes calculation of a facility-wide emission average and testing the process vents subject to that limit is needed to determine compliance. Monitoring pressure drop across HEPA filters is a means for determining continuous compliance, similar to a bag leak detection system in baghouses without HEPA filters. In both cases, periodic stack tests are necessary to ensure that lead emissions are below the applicable emission standard. However, we note that we have included a biannual testing exemption for stacks that report lead concentrations less than 0.1 mg/dscm.

H. Startup, Shutdown, and Malfunction

Comment: One commenter expressed concerns related to the total hydrocarbon (THC) standard during start-up periods. According to the commenter, it will be impossible to meet the minimum temperature at which compliance with the THC standard has been demonstrated during startup of a furnace. The blast furnace crucible must be heated for up to 12 hours before raw materials can be charged. The reverberatory furnace cold startups occur over an extended period also. There is no introduction of feedstock during the warm-up process and, therefore, no emissions of process-related THC emissions. Emissions during this time period will consist entirely of combustion products associated with the fuels natural gas and foundry coke. The afterburner or post combustion system are equipped with rudimentary burners that provide supplementary heat but rely on the excess heat contained within the combined furnace exhaust gases during production operations to achieve an afterburner temperature that assures the efficient combustion of the process off-gases. The afterburner supplementary burners are not sufficient to maintain the required temperature during furnace startup and shutdown sequences. The proposed revisions to subpart X should include definitions of startup and shutdown for collocated blast and reverberatory furnaces that clearly define when alternative THC standards would apply and how compliance with an alternative standard is monitored.

Response: The EPA has revised this final rule to require sources to meet a work practice standard that requires the development of standard operating procedures designed to minimize emissions of THC for each start-up and shutdown scenario anticipated for all units subject to THC emission limits. We considered whether temperature (the metric used to determine continuous compliance for the THC standard in this rule) or performance testing and enforcement of numeric emission limits would be practicable during periods of startup and shutdown. The EPA determined that there are a number of significant technical challenges associated with emissions measurements of THC emissions during periods of startup and shutdown for this industry. These challenges make establishing and complying with numerical emissions limits impracticable.

There are multiple factors informing this decision. Temperature is obviously an inappropriate measure to determine continuous compliances for these furnaces during periods of startup and shutdown when the furnaces are being heated during startup (or cooled during shutdown) from ambient to the steady state operating temperature. The furnaces are heated during periods of startup through slow feeding of natural gas and small amounts of coke with no lead acid batteries fed to the furnace. It is impossible for furnace exhaust to be maintained within the window prescribed by 40 CFR 63.548(h)(4) during periods of startup and shutdown. However, the inability to maintain this temperature in secondary lead smelter furnace exhaust does not indicate high emissions of THC during these periods. In fact, the emissions are likely minimal because there are no plastics being fed to the furnace and minimal fuel use (mostly natural gas). Temperature is thus not the appropriate measure of continuous compliance during these periods and we are unaware of another metric that can be used to determine continuous compliance with a numerical standard for these furnaces during startup and shutdown. In terms of staff scheduling, test crews would have to be on-site and ready to begin THC testing at the beginning of a period of startup or shutdown, have multiple test crews on site for startup or shutdown periods lasting longer than 12 hours, and be prepared to stop and restart measurements to coincide with process trips that can occur during startup and shutdown of secondary lead smelting furnaces. Since startups and shutdowns of these furnaces are not necessarily scheduled long in advance, scheduling such testing to coincide with the beginning of startup or shutdown periods would require having testing crews on-site nearly full time. These staff resource issues would dramatically increase the cost of testing during startup and shutdown periods.

For these technical and economic reasons, we have determined that conducting manual test methods during these secondary lead furnace startup or shutdown periods for THC to be impracticable within the meaning of CAA section 112(h)(2)(B). As a result, we have established a separate work practice standard for emissions of THC during periods of startup and shutdown. This work practice standard requires the development of standard operating procedures designed to minimize emissions of THC for each start-up and shutdown scenario anticipated for all units subject to THC limits.

This startup and shutdown work practice applies only to the THC emission limits. We have no reason to provide startup or shutdown provisions for emissions of lead from any source because the fabric filters used to control particulate and lead emissions are not less effective during startup or shutdown periods (nor would we expect sources to have any difficulty meeting the lead standard since lead-bearing feed is not charged during either startup

or shutdown conditions). Additionally, the metrics for determining continuous compliance with these standards are appropriate for periods of startup and shutdown. Therefore, we have established the separate work practice standard only for THC for periods of startup and shutdown.

During these periods, we do not believe dioxins and furans can form because there are no chlorinated plastics or flame-retardants being fed as these materials are only introduced as impurities with the lead feed material. Therefore, we have not included a standard for dioxins and furans during periods of startup and shutdown because these pollutants are not emitted.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). The EPA has determined that malfunctions should not be viewed as a distinct operating mode and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 112(d) standards, which, once promulgated, apply at all times.

VI. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected facilities?

We anticipate that the 15 secondary lead smelting facilities currently or recently operating in the continental United States and Puerto Rico as well as one facility currently under construction in South Carolina will be affected by this final rule.

B. What are the air quality impacts?

The EPA estimated the emissions reductions that are expected to result from these final amendments to the 1997 NESHAP compared to the 2009 baseline emissions estimates calculated based on ICR data. The ICR data and RTR emissions memo are available in the docket to this action. A detailed documentation of the analysis can be found in the document in the docket titled: *Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category.*

Emissions of lead and arsenic from secondary lead smelters have declined over the last 15 years as a result of federal rules, state rules and on the industry's own initiative. The final rule will cut lead and arsenic emissions by an estimated 68 percent from current actual emission levels based on the ICR data collected for this rulemaking. The final rule will result in estimated annual lead emissions reductions of 7.2 tpy from process and process fugitive sources and annual lead emissions reductions of 6.4 tpy from fugitive dust sources from 2009 baseline emissions (for a total annual reduction of 13.6 tons per year). The expected annual reduction in total metal HAP [8] is 8.2 tpy from process and process fugitive sources and the expected annual reduction is 7.2 tpy from fugitive dust sources (total annual metal HAP reductions are estimated at 15.4 tons). We estimate that these controls will also reduce emissions of particulate matter (PM) (combined total of fine and coarse PM) by 135 tpy.

Based on the emissions data available to the EPA, we believe that all facilities will be able to comply with the final emissions limits for THC and D/F without additional controls. However, we expect that emissions reductions will occur due to increased temperatures of afterburners and from improved work practices. Nevertheless, it is difficult to estimate accurate reductions from these actions and, therefore, we are not providing quantified estimates of reductions for THC and D/F.

C. What are the cost impacts?

As a result of this final rule, certain secondary lead smelting facilities are expected to incur capital costs for the following types of control measures: replacement of existing baghouses with new, higher-performing baghouses, replacement of bags in existing baghouses with better-performing materials, construction of new enclosures for processes not currently enclosed, modification of partially enclosed structures to meet the requirements of total enclosure, and installation of fabric filters on enclosures.

The capital costs for each facility were estimated based on the number and types of upgrades we estimate that facility will require. Each facility was evaluated for its ability to meet the final limits for lead emissions, THC emissions, D/F emissions, and fugitive dust emissions. The memorandum titled: *Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category* includes a complete description of the cost estimate methods used for this analysis and is available in the docket.

The majority of the capital costs estimated for compliance with this action are for purchasing new enclosures and the associated control devices that would be required for these enclosures. For each facility, we estimated the square footage of new enclosures required based on the size of enclosures currently in place compared to facilities that we considered to be totally enclosed with a similar production capacity. We further assumed that the facilities that required a substantial degree of new enclosure would re-configure their facilities, particularly the storage areas, to reduce the footprint of areas subject to total enclosure requirements.

Based on our analysis of the facility configurations, seven facilities were considered already to be totally enclosed. Two facilities are currently installing enclosure structures and equipment that we anticipate will meet the requirements. Consequently, the capital costs do not include estimates for these nine facilities. We estimate that the remaining six facilities will require new building installations, thereby incurring capital costs. For the one facility currently under construction, we estimated one additional baghouse would be required.

Typical enclosure costs were estimated using information and algorithms from the Permanent Total Enclosures chapter in the EPA Air Pollution Control Cost Manual. New baghouse costs were estimated using a model based primarily on the cost information for recent baghouse installations submitted by facilities in the ICR survey. The total capital cost estimate for the enclosures, the ductwork system, and control devices at the seven facilities is approximately $38 million, at an annualized cost of $6.4 million in 2009 dollars (an average of about $1 million per facility).

We also estimated annual costs for the required work practices in this action. Based on the ICR survey information, we estimated that additional costs would be required to implement the work practices at 12 of the 16 facilities. The total annual costs to implement the fugitive emissions work practices are approximately $3 million per year.

For compliance with the stack lead concentration limit, we compared each stack emission point's lead concentration (reported to the EPA under the ICR) to the requirement of 1.0 mg/dscm of lead for any one stack. If the reported concentration exceeded 0.5 mg/dscm (one half the standard), we assumed that the facility would either

[8] Total metal HAP consists of antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel and selenium.

upgrade the baghouse with new bags and additional maintenance or completely replace the baghouse, depending on the age of the baghouse (as explained further below). This cost estimate presents an upper-end estimate of the cost impacts of the final rule that assumes facilities will strive to operate well below the standard to ensure process variability does not cause emission rates approaching the maximum level allowed by the standard. If the baghouse was less than 10 years old and the lead concentration in the outlet was not appreciably over one half the standard (*i.e.,* 0.5 mg/dscm), we assumed that the baghouse would require maintenance and bag replacement. If the baghouse was more than 10 years old and the lead concentration was appreciably over the standard, we assumed the baghouse would be replaced. We then compared each facility's emissions with the flow-weighted, facility-wide concentration limit of 0.20 mg/dscm using the assumption that baghouses needing replacement based on the 1.0 mg/dscm individual stack limit would be replaced with units that performed at least as well as the average baghouse identified in our data set. These analyses indicate that nine baghouses would need to be replaced, and two baghouses would require additional maintenance. To estimate costs, we used a model based primarily on the cost information submitted in the ICR for recent baghouse installations in this industry. We assumed an increase in maintenance cost based on more frequent bag changes (from once every 5 years to once every 2 years). The total capital cost for nine new baghouses at five facilities is estimated to be approximately $11.5 million, and total annual costs were estimated to be approximately $2.7 million.

New limits are being promulgated for THC and D/F emissions from reverberatory and electric furnaces. We anticipate all operating affected units will be able to meet the limits without installing additional controls; however, we have estimated additional costs of $260,000 per year for facilities to increase the temperature of their existing afterburners to ensure continuous compliance with the standards. (We also considered this additional energy use as part of our analysis of whether the standards are warranted under CAA section 112(d)(6). See *Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category,* available in docket ID EPA–HQ–OAR–2011–0344, at page 7.)

The capital cost estimated for additional differential pressure monitors for total enclosures is $106,000. The cost for all additional monitoring and recordkeeping requirements, including the baghouse monitoring, is estimated at $791,000.

The total annualized costs for the final rule are estimated at $13.4 million (2009 dollars). Table 5 of this preamble provides a summary of the estimated costs and emissions reductions associated with the final amendments to the Secondary Lead Smelting NESHAP presented in today's action. More detail on the estimated costs of today's final rule can be found in *Cost Impacts of the revised NESHAP for the Secondary Lead Smelting Source Category,* available in the docket ID EPA–HQ–OAR–2011–0344.

TABLE 5—ESTIMATED COSTS AND REDUCTIONS FOR THE PROMULGATED STANDARDS IN THIS ACTION

Final amendment	Estimated capital cost ($MM)	Estimated annual cost ($MM)	Total HAP emissions reductions (tons per year)	Cost effectiveness in $ per ton total HAP reduction ($ per pound)
Revised stack lead emissions limit	11.5	2.7	8.2 of metal HAP[a] (7.2 of which is lead).	$0.33 MM per ton, ($170 per pound).
Total enclosure of fugitive emissions sources.	38	6.4	5.2 of metal HAP[a] (4.6 of which is lead).	$1.0 MM per ton, ($500 per pound).
Fugitive control work practices	0	3.0	2.0 of metal HAP[a] (1.8 of which is lead).	$1.5 MM per ton, ($750 per pound).
THC and D/F concentration limits	0	0.3	29.6[b]	$0.01 MM per ton.
Additional testing and monitoring	0.3	0.79	N/A	N/A.

[a] Metal HAP consisting of antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium.
[b] Based on total organic HAP reductions as a co-benefit of compliance with standards for dioxins and furans.

The EPA notes that the cost effectiveness of the controls for stack emissions of metal HAP are within the range of values the agency has determined to be reasonable in other section 112 rules. Indeed, EPA determined that a value of $175 per pound of metal HAP removed was reasonable when determining standards for the iron and steel foundry source category, an area source standard reflecting the less rigorous Generally Available Control Technology under section 112(d)(5). See 73 FR at 249. Thus, EPA regards the cost effectiveness of the standards for metal HAP here as reasonable, for purposes of the standards adopted pursuant to sections 112(f)(2) (ample margin of safety determination) and 112(d)(6). The measures required to control fugitive emissions are also cost effective, based largely on the fact that much of the industry has implemented some or all of the measures required in this final rule. The cost effectiveness for THC and D/F is presented as a point of information. Since those standards are MACT floor standards adopted pursuant to sections 112(d)(3), considerations of cost and cost-effectiveness played no part in EPA's consideration.

D. What are the economic impacts?

We performed an economic impact analysis for secondary lead consumers and producers nationally. Most secondary lead producers will incur annual compliance costs of much less than 1 percent of their sales, but one firm will incur costs of greater than 1 percent. Both demand and supply in this sector are generally inelastic to price changes as shown in the Economic Impact Analysis at page 4. Thus, if producers could pass through the entire cost of the rule to consumers, we would expect prices to increase by no more than one percent, with no change in output. Conversely, if producers could not pass through any of the cost by increasing the price, we would expect output to decline by less than one percent.

Hence, the overall economic impact of this proposed rule should be low on most of the affected industry and its consumers. For more information, please refer to the Economic Impact Analysis for this rulemaking that is in docket ID EPA–HQ–OAR–2011–0344.

E. What are the benefits?

The estimated reductions in lead emissions that will be achieved by this final rule will provide significant benefits to public health. For example, the EPA's 2008 Regulatory Impact Analysis (RIA) that was completed for the lead NAAQS (which is available in the docket for this action and also on the EPA's Web site) [9] described monetized benefits calculated for that action associated with reduced exposure to lead.

As noted in that RIA, there were also several other lead-related health effects for which the EPA was unable to quantify a monetized benefit—particularly among adults. These potential impacts included hypertension, non-fatal strokes, reproductive effects and premature mortality, among others.

When viewed in this context, the reductions in concentrations of ambient lead that will be achieved with this RTR for secondary lead smelters are expected to provide important benefits to both children and adults. The EPA did not quantify these benefits because this rule did not trigger the requirement for conducting an RIA under Executive Order 12866, in addition to resource and data limitations for this rule. However, as noted at proposal, this rule should result in areas attaining the lead NAAQS where the secondary lead smelting source dominates the areas' ambient lead concentrations. See 76 FR at 29063–64. Although these standards are not adopted to implement the lead NAAQS, and rest on legal and policy justifications that are unrelated to the requirements for adopting, revising, and implementing a NAAQS (*e.g.,* CAA sections 112(d)(2), (3), 6 and CAA section 112(f)(2) as opposed to CAA sections 107–110), nonetheless these rules will aid in the attainment of the lead NAAQS.[10]

In addition to the benefits likely to be achieved for lead reductions, we also estimate that this final RTR rule will achieve about 39 to 63 tons of reductions in $PM_{2.5}$ emissions as a co-benefit of the HAP reductions annually. See *Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category* at section 8.3, which is available in the docket for information on how the $PM_{2.5}$ emission reductions were calculated based on total PM reductions. Reducing exposure to $PM_{2.5}$ is associated with significant human health benefits, including avoiding mortality and respiratory morbidity. Researchers have associated $PM_{2.5}$ exposure with adverse health effects in numerous toxicological, clinical and epidemiological studies (U.S. EPA, 2009).[11] When adequate data and resources are available and an RIA is required, the EPA generally quantifies several health effects associated with exposure to $PM_{2.5}$ (*e.g.,* U.S. EPA, 2010) [12]. These health effects include premature mortality for adults and infants, cardiovascular morbidities such as heart attacks, hospital admissions, and respiratory morbidities such as asthma attacks, acute and chronic bronchitis, hospital and emergency department visits, work loss days, restricted activity days, and respiratory symptoms. Although the EPA has not quantified certain outcomes including adverse effects on birth weight, pre-term births, pulmonary function and other cardiovascular and respiratory effects, the scientific literature suggests that exposure to $PM_{2.5}$ is also associated with these impacts (U.S. EPA, 2009).

Finally, the final rule will provide human health benefits through reductions in arsenic and cadmium emissions, as well as reductions in emissions of organic HAP (including dioxins and furans).

VII. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 1686.09. The information collection requirements are not enforceable until OMB approves them. The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

We are promulgating new paperwork requirements to the Secondary Lead Smelting source category in the form of stack testing for THC and D/F as described in 40 CFR 63.543(h)–(k). In conjunction with setting THC limits for reverberatory and electric furnaces, additional monitoring and recordkeeping is required for furnace outlet temperature on these units. We believe temperature monitors currently exist in these locations and that the facilities will not incur a capital cost due to this requirement (and received no comments to indicate otherwise). Additionally, increased monitoring is required for demonstrating negative pressure in all total enclosures. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $3,141 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions

[9] *http://www.epa.gov/ttn/ecas/regdata/RIAs/finalpbriach5.pdf.*

[10] It is possible that SIPs may require some of the same types of controls on these sources (or may rely on the controls in these rules as part of a control strategy). EPA cannot, of course, pre-judge the SIP process. What is clear is that this rule should contribute significantly to attainment of the lead NAAQS.

[11] U.S. Environmental Protection Agency (U.S. EPA). 2009. *Integrated Science Assessment for Particulate Matter* (Final Report). EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division. <*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546*>.

[12] U.S. Environmental Protection Agency (U.S. EPA). 2010. *Regulatory Impact Analysis for the Proposed Federal Transport Rule.* Office of Air Quality Planning and Standards, Research Triangle Park, NC. <*http://www.epa.gov/ttn/ecas/regdata/RIAs/proposaltrria_final.pdf*>.

limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions for which an affirmative defense to penalties might be asserted. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus we believe the number of instances in which source operators might be expected to assert the affirmative defense will be extremely small. For this reason, we estimate no more than 2 or 3 such occurrences for all sources subject to subpart X over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available. We estimate 16 regulated entities are currently subject to subpart X and will be subject to all standards. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart X (Secondary Lead Smelting) is estimated to be $790,000 per year. This includes 1,600 labor hours per year at a total labor cost of $347,000 per year, and total non-labor capital and operation and maintenance (O&M) costs of $440,000 per year. This estimate includes performance tests, notifications, reporting, and recordkeeping associated with the new requirements for front-end process vents and back-end process operations. The total burden for the federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 1,150 hours per year at a total labor cost of $52,000 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICRs are approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

C. Regulatory Flexibility Act

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

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

For this source category, which has the NAICS code 331419 (*i.e.,* Secondary Smelting and Refining of Nonferrous Metal (except copper and aluminum)), the SBA small business size standard is 750 employees according to the SBA small business standards definitions. We have estimated the cost impacts and have determined that the impacts do not constitute a significant economic impact on a substantial number of small entities (see: *Small Business Analysis for the Secondary Lead Smelting Source Category,* which is available in the docket for this action).

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Two of the eight parent companies affected are considered a small entity per the definition provided in this section. However, we estimate that this action will not have a significant economic impact on those companies (see: *Small Business Analysis for the Secondary Lead Smelting Source Category).* All other affected parent companies are not small businesses according to the SBA small business size standard for the affected NAICS code (NAICS 331419).

Although this final rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of this rule on small entities. To reduce the impacts, we are promulgating stack limits for lead that allow sources to meet a standard based on aggregated emissions that are based on a weighted average approach (with each stack required to achieve a specified minimum level of control) and have been established at the least stringent levels that we estimate will still result in acceptable risks to public health with an ample margin of safety. Moreover, the compliance testing requirements were established in a way that minimizes the costs for testing and reporting while still providing the agency the necessary information needed to ensure continuous compliance with the standards. For more information, please refer to *Small Business Analysis for the Secondary Lead Smelting Source Category,* which is available in docket ID EPA–HQ–OAR–2011–0344.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action would not result in expenditures of $100 million or more for state, local, and tribal governments, in aggregate, or the private sector in any 1 year. The action imposes no enforceable duties on any state, local or tribal governments or the private sector. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action 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 because it contains no requirements that apply to such governments nor does it impose obligations upon them.

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 final rules primarily affect private industry, and do not impose significant economic costs on state or local governments. 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). It will not have substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. However, the agency does believe there is a disproportionate risk to children due to current emissions of lead from this source category. Children living near secondary lead smelters are the subpopulation most susceptible to effects of air-borne lead, as explained in detail in Section V.A above. The primary NAAQS for lead targets protection to this population, and is a reasonable measure for evaluating acceptability of risk here, again as explained in Section V.A. Modeled ambient air lead concentrations, based on actual emission levels, from about 9 of the 15 facilities in this source category are in excess of the NAAQS for lead. Also, the results of the demographic analysis indicate that of the 84,000 people exposed to a cancer risk greater than 1-in-1 million, the age 0 to 17 demographic percentage (of 30 percent) is 3 percentage points higher than the corresponding national percentage for this demographic group (of 27 percent). This suggests that children may be at a slightly disproportionate risk of exposure to cancer risks from this source category. However, the control measures promulgated in this notice will result in lead concentration levels at or below the lead NAAQS at all facilities, thereby mitigating the risk of future adverse health effects to children. See Section V.A of this preamble and the *Residual Risk Assessment for the Secondary Lead Smelting Source Category,* which is available in the docket for this action, for discussions of post-control risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse energy effect on the supply, distribution, or use of energy. This action will not create any new requirements for sources in the energy supply, distribution, or use sectors. Further, we have concluded that these final rules are not likely to have any adverse energy effects (and indeed, rejected certain types of control options, such as standards based on use of wet electrostatic precipitators, in part because of adverse energy implications).

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This action involves technical standards. The EPA requires use of ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' for its manual methods of measuring the oxygen or carbon dioxide content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Method 3B. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

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

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.

The 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the distributions of HAP related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the facilities where these source categories are located. The development of demographic analyses to inform the consideration of environmental justice issues in EPA rulemakings is evolving.

In the case of Secondary Lead Smelting, we focused on populations within 50 km of the 15 facilities in this source category with emissions sources subject to the MACT standard. More specifically, for these populations we evaluated exposures to HAP that could result in cancer risks of 1-in-1 million or greater, or population exposures to ambient air lead concentrations above the level of the NAAQS for lead. We compared the percentages of particular demographic groups within the focused populations to the total percentages of those demographic groups nationwide. The results of this analysis are documented in the technical report: *Risk and Technology Review—Final Analysis of Socio-Economic Factors for Populations Living Near Secondary Lead Smelting Facilities* which can be found in the docket for this rulemaking. The actions in today's final rule will significantly decrease the risks due to HAP emissions from this source

category for all demographic groups and mitigate any disproportionate risks due to those emissions.

K. Congressional Review Act

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

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 16, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

■ 2. Section 63.14 is amended by revising paragraph (p)(2) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(p) * * *

(2) Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997, IBR approved for §§ 63.548(e)(4), 63.7525(j)(2), and 63.11224(f)(2).

* * * * *

■ 3. Revise subpart X to read as follows:

Subpart X—National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

Sec.

63.541 Applicability.
63.542 Definitions.
63.543 What are my standards for process vents?
63.544 What are my total enclosure standards?
63.545 What are my standards for fugitive dust sources?
63.546 Compliance dates.
63.547 Test methods.
63.548 Monitoring requirements.
63.549 Notification requirements.
63.550 Recordkeeping and reporting requirements.
63.551 Implementation and enforcement.
63.552 Affirmative defense to civil penalties for exceedance of emissions limit during malfunction.
Table 1 to Subpart X of Part 63—General Provisions Applicability to Subpart X
Table 2 to Subpart X of Part 63—Emissions Limits for Secondary Lead Smelting Furnaces
Table 3 to Subpart X of Part 63—Toxic Equivalency Factors

Subpart X—National Emission Standards For Hazardous Air Pollutants From Secondary Lead Smelting

§ 63.541 Applicability.

(a) You are subject to this subpart if you own or operate any of the following affected sources at a secondary lead smelter: Blast, reverberatory, rotary, and electric furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive emissions sources; buildings containing lead bearing materials; and fugitive dust sources. The provisions of this subpart do not apply to primary lead processors, lead refiners, or lead remelters.

(b) Table 1 to this subpart specifies the provisions of subpart A of this part that apply to owners and operators of secondary lead smelters subject to this subpart.

(c) If you are subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable.

(d) Emissions standards in this subpart apply at all times.

§ 63.542 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in subpart A of this part, or in this section as follows:

Affected source means any of the following sources at a secondary lead smelter: Blast, reverberatory, rotary, and electric furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive emissions sources; buildings containing lead bearing materials; and fugitive dust sources.

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

Agglomerating furnace means a furnace used to melt into a solid mass flue dust that is collected from a baghouse.

Bag leak detection system means an instrument that is capable of monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings.

Battery breaking area means the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components.

Blast furnace means a smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.

Blast furnace charging location means the physical opening through which raw materials are introduced into a blast furnace.

Collocated blast furnace and reverberatory furnace means operation at the same location of a blast furnace and a reverberatory furnace where the vent streams of the furnaces are mixed before cooling, with the volumetric flow rate discharged from the blast furnace being equal to or less than that discharged from the reverberatory furnace.

Dryer means a chamber that is heated and that is used to remove moisture from lead-bearing materials before they are charged to a smelting furnace.

Dryer transition equipment means the junction between a dryer and the charge hopper or conveyor, or the junction between the dryer and the smelting furnace feed chute or hopper located at the ends of the dryer.

Electric furnace means a smelting furnace consisting of a vessel into which reverberatory furnace slag is introduced and that uses electrical energy to heat the reverberatory furnace slag to such a temperature (greater than 980 Celsius) that lead compounds are reduced to elemental lead metal.

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a secondary lead smelter that is not associated with a specific process or process fugitive vent or stack. Fugitive dust sources include, but are not limited to, roadways, storage piles, lead bearing material handling transfer points, lead bearing material transport areas, lead bearing material storage areas, other lead bearing material process areas, and buildings.

Furnace and refining/casting area means any area of a secondary lead smelter in which:

(1) Smelting furnaces are located;

(2) Refining operations occur; or

(3) Casting operations occur.

Lead alloy means an alloy in which the predominant component is lead.

Lead bearing material means material with a lead content equal to or greater than 5 mg/l as measured by EPA Method 1311 (Under Method 1311, only materials with at least 100 ppm lead will be considered to be lead bearing).

Leeward wall means the furthest exterior wall of a total enclosure that is opposite the windward wall.

Maintenance activity means any of the following routine maintenance and repair activities that could generate fugitive lead dust:

(1) Replacement or repair of refractory, or any internal or external part of equipment used to process, handle or control lead-containing materials.

(2) Replacement of any duct section used to convey lead-containing exhaust.

(3) Metal cutting or welding that penetrates the metal structure of any equipment, and its associated components, used to process lead-containing material such that lead dust within the internal structure or its components can become fugitive lead dust.

(4) Resurfacing, repair or removal of ground, pavement, concrete, or asphalt.

Materials storage and handling area means any area of a secondary lead smelter in which lead-bearing materials (including, but not limited to, broken battery components, reverberatory furnace slag, flue dust, and dross) are stored or handled between process steps including, but not limited to, areas in which materials are stored in open piles, bins, or tubs, and areas in which material is prepared for charging to a smelting furnace.

Natural draft opening means any permanent opening in an enclosure that remains open during operation of the facility and is not connected to a duct in which a fan is installed.

New source means any affected source at a secondary lead smelting facility the construction or reconstruction of which is commenced after May 19, 2011. A building that is constructed for the purpose of controlling fugitive emissions from an existing source is not considered to be a new source.

Partial enclosure means a structure comprised of walls or partitions on at least three sides or three-quarters of the perimeter surrounding stored materials or process equipment to prevent the entrainment of particulate matter into the air.

Pavement cleaning means the use of vacuum equipment, water sprays, or a combination thereof to remove dust or other accumulated material from the paved areas of a secondary lead smelter.

Plant roadway means any area of a secondary lead smelter outside of a total enclosure that is subject to vehicle traffic, including traffic by forklifts, front-end loaders, or vehicles carrying whole batteries or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Pressurized dryer breaching seal means a seal system connecting the dryer transition pieces which is maintained at a higher pressure than the inside of the dryer.

Process fugitive emissions source means a source of hazardous air pollutant emissions at a secondary lead smelter that is associated with lead smelting or refining, but is not the primary exhaust stream from a smelting furnace, and is not a fugitive dust source. Process fugitive emissions sources include, but are not limited to, smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnaces, and drying kiln transition pieces.

Process vent means furnace vents, dryer vents, agglomeration furnace vents, vents from battery breakers, vents from buildings containing lead bearing material, and any ventilation system controlling lead emissions.

Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.

Reverberatory furnace means a refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.

Rotary furnace (also known as a rotary reverberatory furnace) means a furnace consisting of a refractory-lined chamber that rotates about a horizontal axis and that uses one or more flames to heat the walls of the furnace and lead-bearing scrap to such a temperature (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.

Secondary lead smelter means any facility at which lead-bearing scrap material, primarily, but not limited to, lead-acid batteries, is recycled into elemental lead or lead alloys by smelting.

Shutdown means the period when no lead bearing materials are being fed to the furnace and smelting operations have ceased during which the furnace is cooled from steady-state operating temperature to ambient temperature.

Smelting means the chemical reduction of lead compounds to elemental lead or lead alloys through processing in high-temperature (greater than 980 Celsius) furnaces including, but not limited to, blast furnaces, reverberatory furnaces, rotary furnaces, and electric furnaces.

Startup means the period when no led bearing materials have been fed to the furnace and smelting operations have not yet commenced during which the furnace is heated from ambient temperature to steady-state operating temperature.

Total enclosure means a containment building that is completely enclosed with a floor, walls, and a roof to prevent exposure to the elements and to assure containment of lead bearing material with limited openings to allow access and egress for people and vehicles. The total enclosure must provide an effective barrier against fugitive dust emissions such that the direction of air flow through any openings is inward and the enclosure is maintained under constant negative pressure.

Vehicle wash means a device for removing dust and other accumulated material from the wheels, body, and underside of a vehicle to prevent the inadvertent transfer of lead contaminated material to another area of a secondary lead smelter or to public roadways.

Wet suppression means the use of water, water combined with a chemical surfactant, or a chemical binding agent to prevent the entrainment of dust into the air from fugitive dust sources.

Windward wall means the exterior wall of a total enclosure that is most impacted by the wind in its most prevailing direction determined by a wind rose using available data from the

closest representative meteorological station.

§ 63.543 What are my standards for process vents?

(a) For existing sources, you must maintain the concentration of lead compounds in any process vent gas at or below 1.0 milligrams of lead per dry standard cubic meter (0.00043 grains of lead per dry standard cubic foot). You must maintain the flow-weighted average concentration of lead compounds in vent gases from a secondary lead smelting facility at or below 0.20 milligrams of lead per dry standard cubic meter (0.000087 grains of lead per dry standard cubic foot).

(1) You must demonstrate compliance with the flow weighted average emissions limit on a 12-month rolling average basis, calculated monthly using the most recent test data available.

(2) Until 12 monthly weighted average emissions rates have been accumulated, calculate only the monthly average weighted emissions rate.

(3) You must use Equation 1 of this section to calculate the flow-weighted average concentration of lead compounds from process vents:

$$C_{FWA} = \frac{\sum_{i=1}^{n} F_i \times C_i}{\sum_{i}^{n} F_i} \qquad \text{(Eq. 1)}$$

Where:

C_{FWA} = Flow-weighted average concentration of all process vents.

n = Number of process vents.

F_i = Flow rate from process vent *i* in dry standard cubic feet per minute, as measured during the most recent compliance test.

C_i = Concentration of lead in process vent *i,* as measured during the most recent compliance test.

(4) Each month, you must use the concentration of lead and flow rate obtained during the most recent compliance test performed prior to or during that month to perform the calculation using Equation 1 of this section.

(5) If a continuous emissions monitoring system (CEMS) is used to measure the concentration of lead in a vent, the monthly average lead concentration and monthly average flow rate must be used rather than the most recent compliance test data.

(b) For new sources that begin construction or reconstruction after May 19, 2011 you must maintain the concentration of lead compounds in any process vent gas at or below 0.20 milligrams of lead per dry standard cubic meter (0.000087 grains of lead per dry standard cubic foot).

(c) You must meet the applicable emissions limits for total hydrocarbons and dioxins and furans from furnace sources specified in Table 2 of this subpart. There are no standards for dioxins and furans during periods of startup and shutdown.

(d) If you combine furnace emissions from multiple types of furnaces and these furnaces do not meet the definition of collocated blast and reverberatory furnaces, you must calculate your emissions limit for the combined furnace stream using Equation 2 of this section.

$$C_{EL} = \frac{\sum_{i=1}^{n} F_i \times C_{ELi}}{\sum_{i}^{n} F_i} \qquad \text{(Eq. 2)}$$

Where:

C_{EL} = Flow-weighted average emissions limit (concentration) of combined furnace vents.

n = Number of furnace vents.

F_i = Flow rate from furnace vent i in dry standard cubic feet per minute.

C_{Eli} = Emissions limit (concentration) of pollutant in furnace vent i as specified in Table 2 of this subpart.

(e) If you combine furnace emissions with the furnace charging process fugitive emissions and discharge them to the atmosphere through a common emissions point, you must demonstrate compliance with the applicable total hydrocarbons concentration limit specified in paragraph (c) of this section at a location downstream from the point at which the two emissions streams are combined.

(f) If you do not combine the furnace charging process fugitive emissions with the furnace process emissions, and discharge such emissions to the atmosphere through separate emissions points, you must maintain the total hydrocarbons concentration in the exhaust gas at or below 20 parts per million by volume, expressed as propane and corrected to 4 percent carbon dioxide.

(g) Following the initial performance or compliance test to demonstrate compliance with the lead emissions limits specified in paragraph (a) or (b) of this section, you must conduct performance tests according to the schedule in paragraph (g)(1) or (2) of this section.

(1) Conduct an annual performance test for lead compounds from each process vent (no later than 12 calendar months following the previous compliance test), unless you install and operate a CEMS meeting the requirements of § 63.8.

(2) If an annual compliance test demonstrates that a process vent emitted lead compounds at 0.10 milligram of lead per dry standard cubic meter or less during the time of the annual compliance test, you may submit a written request to the Administrator applying for an extension of up to 24 calendar months from the previous compliance test to conduct the next compliance test for lead compounds.

(h) Following the initial performance or compliance test to demonstrate compliance with the total hydrocarbons emissions limits in paragraphs (c) and (f) of this section, you must conduct an annual performance test for total hydrocarbons emissions from each process vent that has established limits for total hydrocarbons (no later than 12 calendar months following the previous compliance test), unless you install and operate a CEMS meeting the requirements of § 63.8. If an annual compliance test demonstrates that a process vent emitted total hydrocarbons at less than 50 percent of the allowable limit during the time of the annual compliance test, you may submit a written request to the Administrator applying for an extension of up to 24 calendar months from the previous compliance test to conduct the next compliance test for total hydrocarbons.

(i) Following the initial performance or compliance test to demonstrate compliance with the dioxins and furans emissions limits specified in paragraph (c) of this section, you must conduct a performance test for dioxins and furans emissions from each process vent that has established limits for dioxins and furans at least once every 6 years following the previous compliance test.

(j) You must conduct the performance tests specified in paragraphs (g) through (i) of this section under maximum representative operating conditions for the process. During the performance test, you may operate the control device at maximum or minimum representative operating conditions for monitored control device parameters, whichever results in lower emission reduction. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(k) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for

minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(l) If you own or operate a unit subject to emission limits in Table 2 of this subpart, you must minimize the unit's startup and shutdown periods following the manufacturer's recommended procedures, if available. You must develop and follow standard operating procedures designed to minimize emissions of total hydrocarbon for each startup or shutdown scenario anticipated. You must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted startups and shutdowns according to the manufacturer's recommended procedures, if available, and the standard operating procedures designed to minimize emissions of total hydrocarbons.

(m) In addition to complying with the applicable emissions limits for dioxins and furans listed in Table 2 to this subpart, you must operate a process to separate plastic battery casing materials from all automotive batteries prior to introducing feed into a furnace.

§ 63.544 What are my total enclosure standards?

(a) You must operate the process fugitive emissions sources and fugitive dust sources listed in paragraphs (a)(1) through (9) of this section in a total enclosure that is maintained at negative pressure at all times and vented to a control device designed to capture lead particulate. The total enclosure must meet the requirements specified in paragraph (c) of this section.

(1) Smelting furnaces.

(2) Smelting furnace charging areas.

(3) Lead taps, slag taps, and molds during tapping.

(4) Battery breakers.

(5) Refining kettles, casting areas.

(6) Dryers.

(7) Agglomerating furnaces and agglomerating furnace product taps.

(8) Material handling areas for any lead bearing materials except those listed in paragraph (b) of this section.

(9) Areas where dust from fabric filters, sweepings or used fabric filters are processed.

(b) Total enclosures are not required in the following areas: lead ingot product handling areas, stormwater and wastewater treatment areas, intact battery storage areas, areas where lead bearing material is stored in closed containers or enclosed mechanical conveyors, and areas where clean battery casing material is handled.

(c) You must construct and operate total enclosures for the sources listed in paragraph (a) of this section as specified in paragraphs (c)(1) and (2) of this section. The total enclosure must be free of significant cracks, gaps, corrosion or other deterioration that could cause lead bearing material to be released from the primary barrier. Measures must be in place to prevent the tracking of lead bearing material out of the unit by personnel or by equipment used in handling the material. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed.

(1) You must ventilate the total enclosure continuously to ensure negative pressure values of at least 0.013 mm of mercury (0.007 inches of water).

(2) You must maintain an inward flow of air through all natural draft openings.

(d) You must inspect enclosures and facility structures that contain any lead-bearing materials at least once per month. You must repair any gaps, breaks, separations, leak points or other possible routes for emissions of lead to the atmosphere within one week of identification unless you obtain approval for an extension from the Administrator before the repair period is exceeded.

§ 63.545 What are my standards for fugitive dust sources?

(a) You must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail the measures that will be put in place and implemented to control the fugitive dust emissions from the sources listed in paragraphs (a)(1) through (7) of this section.

(1) Plant roadways.

(2) Plant buildings.

(3) Accidental releases.

(4) Battery storage area.

(5) Equipment maintenance.

(6) Material storage areas.

(7) Material handling areas.

(b) You must submit the standard operating procedures manual to the Administrator or delegated authority for review and approval when initially developed and any time changes are made.

(c) The controls specified in the standard operating procedures manual must at a minimum include the requirements specified in paragraphs (c)(1) through (7) of this section.

(1) *Cleaning.* Where a cleaning practice is specified, you must clean by wet wash or a vacuum equipped with a filter rated by the manufacturer to achieve 99.97 percent capture efficiency for 0.3 micron particles in a manner that does not generate fugitive lead dust.

(2) *Plant roadways and paved areas.* You must pave all areas subject to vehicle traffic and you must clean the pavement twice per day, except on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow. Limited access and limited use roadways such as unpaved roads to remote locations on the property may be exempt from this requirement if they are used infrequently (no more than one round trip per day).

(3) *Accidental releases.* You must initiate cleaning of all affected areas within one hour after detection of any accidental release of lead dust that exceeds 10 pounds (the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reportable quantity for lead at 40 CFR 302.4).

(4) *Battery storage areas.* You must inspect any batteries that are not stored in a total enclosure once each week and move any broken batteries to an enclosure within 72 hours of identification. You must clean residue from broken batteries within 72 hours of identification.

(5) *Materials storage and handling areas.* You must wash each vehicle at each exit of the material storage and handling areas. The vehicle wash must include washing of tires, undercarriage and exterior surface of the vehicle followed by vehicle inspection.

(6) *Equipment maintenance.* You must perform all maintenance activities that could generate lead dust in a manner that minimizes emissions of fugitive dust. This must include one or more of the following:

(i) Performing maintenance inside a total permanent enclosure maintained at negative pressure.

(ii) Performing maintenance inside a temporary enclosure and use a vacuum system either equipped with a filter rated by the manufacturer to achieve a capture efficiency of 99.97 percent for 0.3 micron particles or routed to an existing control device permitted for this activity.

(iii) Performing maintenance inside a partial enclosure and use of wet suppression sufficient to prevent dust formation.

(iv) Decontamination of equipment prior to removal from an enclosure.

(v) Immediate repair of ductwork or structure leaks without an enclosure if the time to construct a temporary

enclosure would exceed the time to make a temporary or permanent repair, or if construction of an enclosure would cause a higher level of emissions than if an enclosure were not constructed.

(vi) Activities required for inspection of fabric filters and maintenance of filters that are in need of removal and replacement are not required to be conducted inside of total enclosures. Used fabric filters must be placed in sealed plastic bags or containers prior to removal from a baghouse.

(7) *Material transport.* You must collect and transport all lead bearing dust (*i.e.* lead bearing material which is a dust) within closed conveyor systems or in sealed, leak-proof containers unless the collection and transport activities are contained within a total enclosure. All other lead bearing material must be contained and covered for transport outside of a total enclosure in a manner that prevents spillage or dust formation. Intact batteries and lead ingot product are exempt from the requirement to be covered for transport.

(d) Your standard operating procedures manual must specify that records be maintained of all pavement cleaning, vehicle washing, and battery storage inspection activities performed to control fugitive dust emissions.

(e) You must pave all grounds on the facility or plant groundcover sufficient to prevent wind-blown dust. You may use dust suppressants on unpaved areas that will not support a groundcover (*e.g.,* roadway shoulders, steep slopes, limited access and limited use roadways).

(f) As provided in § 63.6(g), as an alternative to the requirements specified in this section, you can demonstrate to the Administrator (or delegated State, local, or Tribal authority) that an alternative measure(s) is equivalent or better than a practice(s) described in this section.

§ 63.546 Compliance dates.

(a) For affected sources that commenced construction or reconstruction on or before May 19, 2011, you must demonstrate compliance with the requirements of this subpart no later than January 6, 2014.

(b) For affected sources that commenced construction or reconstruction after May 19, 2011, you must demonstrate compliance with the requirements of this subpart by January 5, 2012 or upon startup of operations, whichever is later.

§ 63.547 Test methods.

(a) You must use the test methods from appendix A of part 60 as listed in paragraphs (a)(1) through (5) of this section to determine compliance with the emissions standards for lead compounds specified in § 63.543(a) and (b).

(1) EPA Method 1 at 40 CFR part 60, appendix A–1 to select the sampling port location and the number of traverse points.

(2) EPA Method 2 at 40 CFR part 60, appendix A–1 or EPA Method 5D at 40 CFR part 60, appendix A–3, section 8.3 for positive pressure fabric filters, to measure volumetric flow rate.

(3) EPA Method 3, 3A, or 3B at 40 CFR part 60, appendix A–2 to determine the dry molecular weight of the stack gas.

(4) EPA Method 4 at 40 CFR part 60, appendix A–3 to determine moisture content of the stack gas.

(5) EPA Method 12 or Method 29 at 40 CFR part 60, appendix A–8 to determine compliance with the lead compound emissions standards. The minimum sample volume must be 2.0 dry standard cubic meters (70 dry standard cubic feet) for each run. You must perform three test runs and you must determine compliance using the average of the three runs.

(b) You must use the following test methods in appendix A of part 60 listed in paragraphs (b)(1) through (4) of this section, as specified, to determine compliance with the emissions standards for total hydrocarbons specified in § 63.543(c) through (f).

(1) EPA Method 1 at 40 CFR part 60, appendix A–1 to select the sampling port location and number of traverse points.

(2) The Single Point Integrated Sampling and Analytical Procedure of Method 3B to measure the carbon dioxide content of the stack gases when using either EPA Method 3A or 3B at 40 CFR part 60, appendix A–2.

(3) EPA Method 4 at 40 CFR part 60, appendix A–3 to measure moisture content of the stack gases.

(4) EPA Method 25A at 40 CFR part 60, appendix A–7 to measure total hydrocarbons emissions. The minimum sampling time must be 1 hour for each run. You must perform a minimum of three test runs. You must calculate a 1-hour average total hydrocarbons concentration for each run and use the average of the three 1-hour averages to determine compliance.

(c) You must correct the measured total hydrocarbons concentrations to 4 percent carbon dioxide as specified in paragraphs (c)(1) through (3) of this section.

(1) If the measured percent carbon dioxide is greater than 0.4 percent in each compliance test, you must determine the correction factor using Equation 2 of this section.

$$F = \frac{4.0}{CO_2} \qquad \text{(Eq. 2)}$$

Where:

F = Correction factor (no units).

CO_2 = Percent carbon dioxide measured using EPA Method 3A or 3B at 40 CFR part 60, appendix A–2, where the measured carbon dioxide is greater than 0.4 percent.

(2) If the measured percent carbon dioxide is equal to or less than 0.4 percent, you must use a correction factor (F) of 10.

(3) You must determine the corrected total hydrocarbons concentration by multiplying the measured total hydrocarbons concentration by the correction factor (F) determined for each compliance test.

(d) You must use the following test methods in appendix A of part 60 listed in paragraphs (d)(1) through (5) of this section, as specified, to determine compliance with the emissions standards for dioxins and furans specified in § 63.543(c).

(1) EPA Method 1 at 40 CFR part 60, appendix A–1 to select the sampling port location and the number of traverse points.

(2) EPA Method 2 at 40 CFR part 60, appendix A–1 or EPA Method 5D at 40 CFR part 60, appendix A–3, section 8.3 for positive pressure fabric filters to measure volumetric flow rate.

(3) EPA Method 3A or 3B at 40 CFR part 60, appendix A–2 to determine the oxygen and carbon dioxide concentrations of the stack gas.

(4) EPA Method 4 at 40 CFR part 60, appendix A–3 to determine moisture content of the stack gas.

(5) EPA Method 23 at 40 CFR part 60, appendix A–7 to determine the dioxins and furans concentration.

(e) You must determine the dioxins and furans toxic equivalency by following the procedures in paragraphs (e)(1) through (3) of this section.

(1) Measure the concentration of each dioxins and furans congener shown in Table 3 of this subpart using EPA Method 23 at 40 CFR part 60, appendix A–7. You must correct the concentration of dioxins and furans in terms of toxic equivalency to 7 percent O_2 using Equation 3 of this section.

$$Cadj = \frac{Cmeas(20.9-7)}{(20.9-\%O2)} \qquad \text{(Eq. 3)}$$

Where:

C_{adj} = Dioxins and furans concentration adjusted to 7 percent oxygen.

C_{meas} = Dioxins and furans concentration measured in nanograms per dry standard cubic meter.

(20.9–7) = 20.9 percent oxygen—7 percent oxygen (defined oxygen correction basis).

20.9 = Oxygen concentration in air, percent.

$\%O_2$ = Oxygen concentration measured on a dry basis, percent.

(2) For each dioxins and furans congener measured as specified in paragraph (e)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 to this subpart.

(3) Sum the values calculated as specified in paragraph (e)(2) of this section to obtain the total concentration of dioxins and furans emitted in terms of toxic equivalency.

§ 63.548 Monitoring requirements.

(a) You must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters or cartridge filters) that are used to control process vents, process fugitive, or fugitive dust emissions from any source subject to the lead emissions standards in §§ 63.543, 63.544, and 63.545, including those used to control emissions from building ventilation.

(b) You must submit the standard operating procedures manual for baghouses required by paragraph (a) of this section to the Administrator or delegated authority for review and approval.

(c) The procedures that you specify in the standard operating procedures manual for inspections and routine maintenance must, at a minimum, include the requirements of paragraphs (c)(1) through (9) of this section.

(1) Daily monitoring of pressure drop across each baghouse cell.

(2) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms.

(3) Daily check of compressed air supply for pulse-jet baghouses.

(4) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(5) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(6) Monthly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(7) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(8) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(9) Except as provided in paragraphs (g) and (h) of this section, continuous operation of a bag leak detection system, unless a system meeting the requirements of paragraph (m) of this section for a continuous emissions monitoring system is installed for monitoring the concentration of lead.

(d) The procedures you specify in the standard operating procedures manual for baghouse maintenance must include, at a minimum, a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (c)(9) of this section, must meet the specification and requirements of paragraphs (e)(1) through (8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings.

(3) The bag leak detection system must be equipped with an alarm system that will alarm when an increase in relative particulate loadings is detected over a preset level.

(4) You must install and operate the bag leak detection system in a manner consistent with the guidance provided in ''Office of Air quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance'' EPA–454/R–98–015, September 1997 (incorporated by reference, see § 63.14) and the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system.

(5) The initial adjustment of the system must, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved standard operating procedures manual required under paragraph (a) of this section. You cannot increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection that demonstrates that the baghouse is in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, you must install the bag leak detector downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) You must include in the standard operating procedures manual required by paragraph (a) of this section a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan must include, at a minimum, the procedures that you will use to determine and record the time and cause of the alarm as well as the corrective actions taken to minimize emissions as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm.

(2) The cause of the alarm must be alleviated by taking the necessary corrective action(s) that may include, but not be limited to, those listed in paragraphs (f)(2)(i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(g) Baghouses equipped with high efficiency particulate air (or HEPA) filters as a secondary filter used to control emissions from any source subject to the lead emission standards in § 65.543(a) or (b), are exempt from the requirement to be equipped with a bag leak detection system. You must monitor and record the pressure drop across each HEPA filter system daily. If the pressure drop is outside the limit(s) specified by the filter manufacturer, you must take appropriate corrective measures, which may include but not be limited to those given in paragraphs (g)(1) through (4) of this section.

(1) Inspecting the filter and filter housing for air leaks and torn or broken filters.

(2) Replacing defective filter media, or otherwise repairing the control device.

(3) Sealing off a defective control device by routing air to other control devices

(4) Shutting down the process producing the particulate emissions.

(h) Baghouses followed by a wet electrostatic precipitator used as a secondary control device for any source subject to the lead emission standards in § 63.543(a) or (b), are exempt from the requirement to be equipped with a bag leak detection system.

(i) If you use a wet scrubber to control particulate matter and metal hazardous air pollutant emissions from a process vent to demonstrate continuous compliance with the emissions standards, you must monitor and record the pressure drop and water flow rate of the wet scrubber during the initial performance or compliance test conducted to demonstrate compliance with the lead emissions limit under § 63.543(a) or (b). Thereafter, you must monitor and record the pressure drop and water flow rate values at least once every hour and you must maintain the pressure drop and water flow rate at levels no lower than 30 percent below the pressure drop and water flow rate measured during the initial performance or compliance test.

(j) You must comply with the requirements specified in paragraphs (j)(1) through (4) of this section to demonstrate continuous compliance with the total hydrocarbons and dioxins and furans emissions standards. During periods of startup and shutdown, the requirements of paragraph (j)(4) of this section do not apply. Instead, you must demonstrate compliance with the standard for total hydrocarbon by meeting the requirements of § 63.543(l).

(1) Continuous temperature monitoring. You must install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in § 63.8.

(2) Prior to or in conjunction with the initial performance or compliance test to determine compliance with § 63.543(c), you must conduct a performance evaluation for the temperature monitoring device according to § 63.8(e). The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in Performance Specification 2, 40 CFR part 60, appendix B, sections 2, 3, 5, 7, 8, 9, and 10 must be used to conduct the evaluation. The temperature monitoring device must meet the following performance and equipment specifications:

(i) The recorder response range must include zero and 1.5 times the average temperature identified in paragraph (j)(3) of this section.

(ii) The monitoring system calibration drift must not exceed 2 percent of 1.5 times the average temperature identified in paragraph (j)(3) of this section.

(iii) The monitoring system relative accuracy must not exceed 20 percent.

(iv) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

(3) You must monitor and record the temperature of the afterburner or the furnace exhaust streams every 15 minutes during the initial performance or compliance test for total hydrocarbons and dioxins and furans and determine an arithmetic average for the recorded temperature measurements.

(4) To demonstrate continuous compliance with the standards for total hydrocarbons and dioxins and furans, you must maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °Celsius (50 °Fahrenheit) below the average established in paragraph (j)(3) of this section.

(k) You must install, operate, and maintain a digital differential pressure monitoring system to continuously monitor each total enclosure as described in paragraphs (k)(1) through (5) of this section.

(1) You must install and maintain a minimum of one building digital differential pressure monitoring system at each of the following three walls in each total enclosure that has a total ground surface area of 10,000 square feet or more:

(i) The leeward wall.

(ii) The windward wall.

(iii) An exterior wall that connects the leeward and windward wall at a location defined by the intersection of a perpendicular line between a point on the connecting wall and a point on its furthest opposite exterior wall, and intersecting within plus or minus ten meters of the midpoint of a straight line between the two other monitors specified. The midpoint monitor must not be located on the same wall as either of the other two monitors.

(2) You must install and maintain a minimum of one building digital differential pressure monitoring system at the leeward wall of each total enclosure that has a total ground surface area of less than 10,000 square feet.

(3) The digital differential pressure monitoring systems must be certified by the manufacturer to be capable of measuring and displaying negative pressure in the range of 0.01 to 0.2 millimeters mercury (0.005 to 0.11 inches of water) with a minimum accuracy of plus or minus 0.001 millimeters of mercury (0.0005 inches of water).

(4) You must equip each digital differential pressure monitoring system with a continuous recorder.

(5) You must calibrate each digital differential pressure monitoring system in accordance with manufacturer's specifications at least once every 12 calendar months or more frequently if recommended by the manufacturer.

(l) Except as provided in paragraphs (l)(2) or (3) of this section, all new or reconstructed sources subject to the requirements under § 63.543 must install, calibrate, maintain, and operate a CEMS for measuring lead emissions. In addition to the General Provisions requirements for CEMS in § 63.8(c) that are referenced in Table 1 to this subpart, you must comply with the requirements for CEMS specified in paragraph (m) of this section.

(1) Sources subject to the emissions limits for lead compounds under § 63.543(b) must install a CEMS for measuring lead emissions within 180 days of promulgation by the EPA of performance specifications for lead CEMS.

(2) Prior to 180 days after the EPA promulgates performance specifications

for CEMS used to measure lead concentrations, you must use the procedure described in § 63.543(g)(1) to determine compliance.

(3) Vents from control devices that serve only to control emissions from buildings containing lead bearing materials are exempt from the requirement to install a CEMS for measuring lead emissions.

(m) If a CEMS is used to measure lead emissions, you must install a continuous emissions monitoring system with a sensor in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the CEMS used to measure lead emissions, taking into account the manufacturer's recommendations. The flow rate sensor is that portion of the system that senses the volumetric flow rate and generates an output proportional to that flow rate.

(1) The continuous emissions monitoring system must be designed to measure the exhaust gas flow rate over a range that extends from a value of at least 20 percent less than the lowest expected exhaust flow rate to a value of at least 20 percent greater than the highest expected exhaust gas flow rate.

(2) The continuous emissions monitoring system must be equipped with a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (m)(1) of this section.

(3) You must perform an initial relative accuracy test of the continuous emissions monitoring system in accordance with the applicable Performance Specification in appendix B to part 60 of this chapter.

(4) You must operate the continuous emissions monitoring system and record data during all periods of operation of the affected facility including periods of startup, shutdown, and malfunction, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments.

(5) If you have a CEMS to measure lead emissions, you must calculate the average lead concentration and flow rate monthly to determine compliance with § 63.543(a).

(6) When the continuous emissions monitoring system is unable to provide quality assured data, the following apply:

(i) When data are not available for periods of up to 48 hours, the highest recorded hourly emissions rate from the previous 24 hours must be used.

(ii) When data are not available for 48 or more hours, the maximum daily emissions rate based on the previous 30 days must be used.

§ 63.549 Notification requirements.

(a) You must comply with all of the notification requirements of § 63.9. Electronic notifications are encouraged if suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy), and when required by this subpart.

(b) You must submit the fugitive dust control standard operating procedures manual required under § 63.545(a) and the standard operating procedures manual for baghouses required under § 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures. You must submit this notification no later than January 7, 2013. For sources that commenced construction or reconstruction after January 5, 2012, you must submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than January 5, 2012. For an affected source that has received a construction permit from the Administrator or delegated authority on or before January 5, 2012, you must submit this notification no later than January 7, 2014.

§ 63.550 Recordkeeping and reporting requirements.

(a) You must comply with all of the recordkeeping and reporting requirements specified in § 63.10 that are referenced in Table 1 to this subpart.

(1) Records must be maintained in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). However, electronic recordkeeping and reporting if suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy), and when required by this subpart.

(2) Records must be kept on site for at least 2 years after the date of occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1).

(b) The standard operating procedures manuals required in §§ 63.545(a) and 63.548(a) must be submitted to the Administrator in electronic format for review and approval of the initial submittal and whenever an update is made to the procedure.

(c) You must maintain for a period of 5 years, records of the information listed in paragraphs (c)(1) through (13) of this section.

(1) Electronic records of the bag leak detection system output.

(2) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the corrective actions taken, and the date and time the cause of the alarm was corrected.

(3) All records of inspections and maintenance activities required under § 63.548(c) as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a).

(4) Electronic records of the pressure drop and water flow rate values for wet scrubbers used to control metal hazardous air pollutant emissions from process fugitive sources as required in § 63.548(i).

(5) Electronic records of the output from the continuous temperature monitor required in § 63.548(j)(1), and an identification of periods when the 3-hour average temperature fell below the minimum established under § 63.548(j)(4), and an explanation of the corrective actions taken.

(6) Electronic records of the continuous pressure monitors for total enclosures required in § 63.548(k), and an identification of periods when the pressure was not maintained as required in § 63.544(c)(1).

(7) Records of any time periods power was lost to the continuous pressure monitors for total enclosures required in § 63.548(k) and records of loss of power to the air handling system maintaining negative pressure on total enclosures.

(8) Records of the inspections of facility enclosures required in § 63.544(d).

(9) Records of all cleaning and inspections required as part of the practices described in the standard operating procedures manual required under § 63.545(a) for the control of fugitive dust emissions.

(10) Electronic records of the output of any CEMS installed to monitor lead emissions meeting the requirements of § 63.548(m).

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

(12) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.543(k), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(13) Records of any periods of startup or shutdown of a furnace and actions taken to minimize emissions during that period in accordance with § 63.543(l).

(d) You must comply with all of the reporting requirements specified in § 63.10 of the General Provisions that are referenced in Table 1 to this subpart.

(1) You must submit reports no less frequent than specified under § 63.10(e)(3) of the General Provisions.

(2) Once a source reports a violation of the standard or excess emissions, you must follow the reporting format required under § 63.10(e)(3) until a request to reduce reporting frequency is approved by the Administrator.

(e) In addition to the information required under the applicable sections of § 63.10, you must include in the reports required under paragraph (d) of this section the information specified in paragraphs (e)(1) through (14) of this section.

(1) Records of the concentration of lead in each process vent, and records of the rolling 12-month flow-weighted average concentration of lead compounds in vent gases calculated monthly as required in § 63.543(a), except during the first year when the concentration is calculated using the method described in § 63.543(a)(2).

(2) Records of the concentration of total hydrocarbon and dioxins and furans in each process vent that has established limits for total hydrocarbon and dioxins and furans as required in § 63.543(c).

(3) Records of all periods when monitoring using a CEMS for lead or total hydrocarbon was not in compliance with applicable limits.

(4) Records of all alarms from the bag leak detection system specified in § 63.548.

(5) A description of the procedures taken following each bag leak detection system alarm pursuant to § 63.548(f)(1) and (2).

(6) A summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a), including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(7) An identification of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 63.548(i), and an explanation of the corrective actions taken.

(8) Records of the temperature monitor output, in 3-hour block averages, for those periods when the temperature monitored pursuant to § 63.548(j) fell below the level established in § 63.548(j)(4).

(9) Certification that the plastic separation process for battery breakers required in § 63.543(m) was operated at all times the battery breaker was in service.

(10) Records of periods when the pressure was not maintained as required in § 63.544(c) or power was lost to the continuous pressure monitoring system as required in § 63.548(k).

(11) If a malfunction occurred during the reporting period, the report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and caused or may have caused any applicable emissions limitation to be exceeded. The report must also include a description of actions taken during a malfunction of an affected source to minimize emissions in accordance with § 63.543(k), including actions taken to correct a malfunction.

(12) A summary of the fugitive dust control measures performed during the required reporting period, including an explanation of the periods when the procedures outlined in the standard operating procedures manual pursuant to § 63.545(a) were not followed and the corrective actions taken. The reports must not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under § 63.545(a).

(13) Records of any periods of startup or shutdown of a furnace including an explanation of the periods when the procedures required in § 63.543(l) were not followed and the corrective actions taken.

(14) You must submit records pursuant to paragraphs (e)(14)(i) through (iii) of this section.

(i) As of January 1, 2012 and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to EPA's Central Data Exchange by using the Electronic Reporting Tool (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html/*). Only data collected using test methods compatible with the Electronic Reporting Tool are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(ii) Within 60 days after the date of completing each CEMS performance evaluation test, as defined in § 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into EPA's Central Data Exchange by using the Electronic Reporting Tool as mentioned in paragraph (e)(14)(i) of this section. Only data collected using test methods compatible with the Electronic Reporting Tool are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(iii) All reports required by this subpart not subject to the requirements in paragraph (e)(14)(i) and (ii) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (e)(14)(i) and (ii) of this section in paper format.

§ 63.551 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.541, 63.543 through 63.544, § 63.545, and § 63.546.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

§ 63.552 Affirmative defense to civil penalties for exceedance of emissions limit during malfunction.

In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) *Affirmative defense.* To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

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

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

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

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(2) Repairs were made as expeditiously as possible when the applicable emissions limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs.

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

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

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

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

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs.

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

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

(b) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emissions limit(s) during a malfunction, shall notify the Administrator by telephone or facsimile transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense, shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

TABLE 1 TO SUBPART X OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

Reference	Applies to subpart X	Comment
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes.	
63.5	Yes.	
63.6(a), (b), (c)	Yes.	
63.6(d)	No.	Section reserved.
63.6(e)(1)(i)	No.	See 63.543(k) for general duty requirement.
63.6(e)(1)(ii)	No.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	No.	Section reserved.
63.6(e)(3)	No.	
63.6(f)(1)	No.	
63.6(g)	Yes.	
63.6(h)	No.	No opacity limits in rule.
63.6(i)	Yes.	
63.6(j)	Yes.	
63.7(a)–(d)	Yes.	
63.7(e)(1)	No.	See 63.543(j).
63.7(e)(2)–(e)(4)	Yes.	
63.7(f), (g), (h)	Yes.	
63.8(a)–(b)	Yes.	
63.8(c)(1)(i)	No.	See 63.543(k) for general duty requirement.

TABLE 1 TO SUBPART X OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART X—Continued

Reference	Applies to subpart X	Comment
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	No.	
63.8(c)(2)–(d)(2)	Yes.	
63.8(d)(3)	Yes, except for last sentence.	
63.8(e)–(g)	Yes.	
63.9(a), (b), (c), (e), (g), (h)(1)through (3), (h)(5) and (6), (i) and (j).	Yes.	
63.9(f)	No.	
63.9(h)(4)	No.	Reserved.
63.10 (a)	Yes.	
63.10 (b)(1)	Yes.	
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No.	See 63.550 for recordkeeping of occurrence and duration of malfunctions and recordkeeping of actions taken during malfunction.
63.10(b)(2)(iii)	Yes.	
63.10(b)(2)(iv)–(b)(2)(v)	No.	
63.10(b)(2)(vi)–(b)(2)(xiv)	Yes.	
63.(10)(b)(3)	Yes.	
63.10(c)(1)–(9)	Yes.	
63.10(c)(10)–(11)	No.	See 63.550 for recordkeeping of malfunctions.
63.10(c)(12)–(c)(14)	Yes.	
63.10(c)(15)	No.	
63.10(d)(1)–(4)	Yes.	
63.10(d)(5)	No.	See 63.550(e)(11) for reporting of malfunctions.
63.10(e)–(f)	Yes.	
63.11	No.	Flares will not be used to comply with the emission limits.
63.12 to 63.15	Yes.	

TABLE 2 TO SUBPART X OF PART 63—EMISSIONS LIMITS FOR SECONDARY LEAD SMELTING FURNACES

For vents from these processes . . .	You must meet the following emissions limits . . . [a]	
	Total hydrocarbon ppm by volume expressed as propane corrected to 4 percent carbon dioxide	Dioxin and furan (dioxins and furans) nanograms/dscm expressed as TEQ corrected to 7 percent O_2
Collocated blast and reverberatory furnaces (new and existing)	20 ppmv	0.50 ng/dscm.
Collocated blast and reverberatory furnaces when the reverberatory furnace is not operating for units that comments construction or reconstruction before June 9, 1994.	360 ppmv	170 ng/dscm.
Collocated blast and reverberatory furnaces when the reverberatory furnace is not operating for units that commence construction or reconstruction after June 9, 1994.	70 ppmv	170 ng/dscm.
Blast furnaces that commence construction or reconstruction before June 9, 1994.	360 ppmv	170 ng/dscm.
Blast furnaces that commence construction or reconstruction after June 9, 1994.	70 ppmv	170 ng/dscm.
Blast furnaces that commence construction or reconstruction after May 19, 2011.	70 ppmv	10 ng/dscm.
Reverberatory and electric furnaces that commence construction or reconstruction before May 19, 2011.	12 ppmv	0.20 ng/dscm.
Reverberatory and electric furnaces that commence construction or reconstruction after May 19, 2011.	12 ppmv	0.10 ng/dscm.

[a] There are no standards for dioxins and furans during periods of startup and shutdown.

TABLE 3 TO SUBPART X OF PART 63—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001

TABLE 3 TO SUBPART X OF PART 63—TOXIC EQUIVALENCY FACTORS—Continued

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1

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Part III

Federal Reserve System

12 CFR Part 252

Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket No. 1438]

RIN 7100–AD–86

Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies

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

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is requesting comment on proposed rules that would implement the enhanced Prudential standards required to be established under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and the early remediation requirements established under section 166 of the Act. The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

DATES: *Comments:* Comments should be received on or before March 31, 2012.

ADDRESSES: You may submit comments, identified by Docket No. 1438 and RIN 7100–AD–86 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mark Van Der Weide, Senior Associate Director, (202) 452–2263, or Molly E. Mahar, Senior Supervisory Financial Analyst, (202) 973–7360, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, or Dominic A. Labitzky, Senior Attorney, (202) 452–3428, Legal Division.

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I. Introduction

The recent financial crisis showed that some financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to overall financial stability. The sudden collapses or near-collapses of major financial companies were among the most destabilizing events of the crisis. The crisis also demonstrated weaknesses in the existing framework for supervising, regulating and otherwise constraining the risks of major financial companies, as well as deficiencies in the government's toolkit for managing their failure.

As a result of the imprudent risk taking of major financial companies and the severe consequences to the financial system and the economy associated with the disorderly failure of these interconnected companies, the U.S. government (and many foreign governments in their home countries) intervened on an unprecedented scale to reduce the impact of, or prevent, the failure of these companies and the attendant consequences for the broader financial system. Market participants before the crisis had assumed some probability that major financial companies would receive government assistance if they became troubled. But the actions taken by the government in response to the crisis, although necessary, have solidified that market view.

The market perception that some companies are ''too big to fail'' poses threats to the financial system. First, it reduces the incentives of shareholders, creditors and counterparties of these companies to discipline excessive risk-taking. Second, it produces competitive distortions because companies perceived as ''too big to fail'' can often fund themselves at a lower cost than other companies. This distortion is unfair to smaller companies, damaging to competition, and tends to artificially encourage further consolidation and concentration in the financial system.

A major thrust of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act or Act) [1] is mitigating the threat to financial stability posed by systemically important financial companies. The Dodd-Frank Act addresses this problem with a multi-pronged approach: a new orderly liquidation authority for financial companies (other than banks and insurance companies); the establishment of the Financial Stability Oversight Council (Council) empowered with the authority to designate nonbank financial companies for Board oversight; stronger regulation of major bank holding companies and nonbank financial companies designated for Board oversight; and enhanced regulation of over-the-counter (OTC) derivatives, other core financial markets, and financial market utilities.

Overview of Statutory Requirements

The focus of this proposal is stronger regulation of major bank holding companies and nonbank financial companies designated by the Council for Board supervision. In particular, sections 165 and 166 of the Dodd-Frank Act require the Board to impose a package of enhanced prudential standards on bank holding companies with total consolidated assets of $50 billion or more [2] and nonbank financial companies the Council has designated, pursuant to section 113 of the Dodd-Frank Act,[3] for supervision by the Board (together, covered companies and each a covered company). By their terms, sections 165 and 166 of the Act apply to any foreign nonbank financial company designated by the Council for supervision by the Board [4] and any foreign banking organization with total consolidated assets of $50 billion or more that is or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 pursuant to section 8(a) of the International Banking Act of 1978.[5] However, as explained in greater detail below, this proposal does not apply to foreign banking organizations, and the Board expects to issue a separate proposal shortly that would apply the enhanced standards of sections 165 and 166 of the Act to foreign banking organizations. The definition of ''covered company'' for purposes of the proposal would nonetheless include a foreign banking organization's U.S.-based bank holding company subsidiary that on its own has total consolidated assets of $50 billion or more.[6] This proposal would not extend to the U.S. operations of a foreign banking organization that are conducted outside of a U.S.-based bank holding company subsidiary.

The prudential standards for covered companies required under section 165 of the Dodd-Frank Act must include enhanced risk-based capital and leverage requirements, enhanced liquidity requirements, enhanced risk management and risk committee requirements, a requirement to submit a resolution plan, single-counterparty credit limits, stress tests, and a debt-to-equity limit for covered companies that the Council has determined pose a grave threat to financial stability. In general, the Act directs the Board to implement enhanced prudential standards that strengthen existing micro-prudential supervision [7] and regulation of individual companies and incorporate macro-prudential considerations so as to reduce threats posed by covered companies to the stability of the financial system as a whole. Section 166 of the Act requires the Board to establish a regulatory framework for the early remediation of financial weaknesses of covered companies in order to minimize the probability that such companies will become insolvent and the potential harm of such insolvencies to the financial stability of the United States.[8]

In addition to the required standards, the Act authorizes but does not require the Board to establish additional enhanced standards for covered companies relating to (i) contingent capital; (ii) public disclosures; (iii) short-term debt limits; and (iv) such other prudential standards as the Board

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] The Board, pursuant to a Council recommendation, may raise the $50 billion asset threshold for bank holding companies with respect to the application of certain enhanced standards. *See* 12 U.S.C. 5365(a)(2)(B).

[3] *See* 12 U.S.C. 5323. The Council proposed rules to implement its authority under section 113 in January 2011 and October 2011. *See* 76 FR 4555 (January 26, 2011) and 76 FR 64264 (October 18, 2011).

[4] *See* 12 U.S.C. 5323(b). Section 102(c) limits the application of section 165 to only the U.S. activities and subsidiaries of a foreign nonbank financial company. 12 U.S.C. 5311(c).

[5] *See* 12 U.S.C. 5311(a)(1) (defining the term ''bank holding company'' for purposes of Title I of the Dodd-Frank Act). A foreign banking organization is treated as a bank holding company pursuant to section 8(a) of the International Banking Act if the foreign banking organization operates a branch, agency or commercial lending company in the United States.

[6] With the exception of the proposed liquidity and enterprise-wide risk management requirements and the debt-to-equity limit for covered companies that the Council has determined pose a grave threat, the proposed rule would not apply to any bank holding company subsidiary of a foreign banking organization that has relied on Supervision and Regulation Letter SR 01–01 issued by the Board of Governors (as in effect on May 19, 2010) until July 21, 2015. This is consistent with the phase-in period for the imposition of minimum risk-based and leverage capital requirements established in section 171 of the Dodd-Frank Act.

[7] Micro-prudential supervision focuses on surveillance of the safety and soundness of individual companies, whereas macro-prudential supervision focuses on the surveillance of systemic risk posed by individual companies and systemic risks posed by interconnectedness among companies.

[8] *See* 12 U.S.C. 5366(b).

determines appropriate.[9] The Board is not proposing any of these supplemental standards at this time but continues to consider whether adopting any of these standards would be appropriate.

The Act requires the enhanced standards established by the Board for covered companies under section 165 to be more stringent than those standards applicable to other bank holding companies and nonbank financial companies that do not present similar risks to U.S. financial stability.[10] Section 165 also requires that the enhanced standards established pursuant to that section increase in stringency based on the systemic footprint and risk characteristics of individual covered companies.[11]

In prescribing prudential standards under section 165(b)(1)[12] to covered companies, the Board is required to take into account differences among bank holding companies covered by the rule and nonbank financial companies supervised by the Board, based on certain considerations.[13] The Board also has authority under section 165 to tailor the application of the standards, including differentiating among covered companies on an individual basis or by category.[14] When differentiating among companies for purposes of applying the standards established under section 165, the Board may consider the companies' size, capital structure, riskiness, complexity, financial activities, and any other risk-related factor the Board deems appropriate.

II. Overview of the Proposal

The Board is requesting comment on proposed rules to implement certain requirements of sections 165 and 166 of the Dodd-Frank Act.[15] The Board consulted with the Council, including by providing periodic updates to members of the Council and their staff on the development of the proposed enhanced standards. The proposal reflects comments provided to the Board as a part of this consultation process. The Board also intends, before imposing prudential standards or any other requirements pursuant to section 165 that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a covered company, to consult with each Council member that primarily supervises any such subsidiary.[16]

This proposal includes rules to implement the requirements under section 165 related to (i) risk-based capital and leverage; (ii) liquidity; (iii) single-counterparty credit limits; (iv) overall risk management and risk committees; (v) stress tests; and (vi) a debt-to-equity limit for covered companies that the Council has determined pose a grave threat to financial stability. The proposal also includes rules to implement the early remediation requirements in section 166 of the Act related to establishing measures of financial condition and remediation requirements that increase in stringency as the financial condition of a covered company declines.

Section 165(d) of the Act also establishes requirements that each covered company submit periodically to the Board and Federal Deposit Insurance Corporation (FDIC) a plan for rapid and orderly resolution under the Bankruptcy Code in the event of its material financial distress or failure, as well as a periodic report regarding credit exposures between each covered company and other significant financial companies. The Board and FDIC jointly issued a final rule to implement the resolution plan requirement that became effective on November 30, 2011 and expect to implement periodic reporting of credit exposures at a later date.[17]

By setting forth comprehensive enhanced prudential standards and an early remediation framework for covered companies, the proposal would create an integrated set of requirements that seeks to meaningfully reduce the probability of failure of systemically important companies and minimize damage to the financial system and the broader economy in the event such a company fails. The proposed rules, which increase in stringency with the level of systemic risk posed by and the risk characteristics of the covered company, would provide incentives for covered companies to reduce their systemic footprint and encourage covered companies to consider the external costs that their failure or distress would impose on the broader financial system, thus helping to offset any implicit subsidy they may have enjoyed as a result of market perceptions of implicit government support.

This proposal provides a core set of concrete rules to complement the Federal Reserve's existing efforts to enhance the supervisory framework for covered companies. The Federal Reserve, since before the passage of the Dodd-Frank Act, has been taking steps to strengthen its supervision of the largest, most complex banking companies. For example, the Federal Reserve created a centralized multidisciplinary body called the Large Institution Supervision Coordinating Committee (LISCC) to oversee the supervision of these companies. This committee uses horizontal, or cross-company, evaluations to monitor interconnectedness and common practices among companies that could lead to greater systemic risk. The committee also uses additional and improved quantitative methods for evaluating the financial condition of companies and the risks they might pose to each other and to the broader financial system.

A. Scope of Application

The Dodd-Frank Act requires the Board to apply enhanced standards established under section 165(b)(1) and early remediation requirements under

[9] *See* 12 U.S.C. 5365(b)(1)(B).

[10] *See* 12 U.S.C. 5365(a)(1)(A).

[11] *See* 12 U.S.C. 5365(a)(1)(B). Under section 165(a)(1)(B), the enhanced standards must increase in stringency, based on the considerations listed in section 165(b)(3). These considerations are summarized in note 13, infra.

[12] 12 U.S.C. 5365(b)(1). The Board is separately required to issue regulations to implement the risk committee and stress test enhanced standards pursuant to sections 165(h) and 165(i), respectively.

[13] *See* 12 U.S.C. 5365(b)(3). The factors the Board must consider include—(i) The factors described in sections 113(a) and (b) of the Dodd-Frank Act (12 U.S.C. 5313(a) and (b)); (ii) whether the company owns an insured depository institution; (iii) nonfinancial activities and affiliations of the company; and (iv) any other risk-related factors that the Board determines appropriate. 12 U.S.C. 5365(b)(3)(A). The Board must, as appropriate, adapt the required standards in light of any predominant line business of a nonbank financial company for which particular standards may not be appropriate. 12 U.S.C. 5365(b)(3)(D). Section 165(b)(3) also requires the Board, to the extent possible, to ensure that small changes in the factors listed in sections 113(a) and 113(b) of the Dodd-Frank Act would not result in sharp, discontinuous changes in the prudential standards established by the Board under section 165(b)(1). 12 U.S.C. 5365(b)(3)(B). The statute also directs the Board to take into account any recommendations made by the Council pursuant to its authority under section 115 of the Dodd-Frank Act. 12 U.S.C. 5365(b)(3)(C).

[14] *See* 12 U.S.C. 5365(a)(2)(A).

[15] 12 U.S.C. 5365 and 5366.

[16] *See* 12 U.S.C. 5365(b)(4).

[17] *See* 76 FR 67323 (November 1, 2011). In response to significant concerns expressed by commenters about the clarity of key definitions and the scope of the reporting requirement of the proposed credit exposure reporting requirement, the Board and FDIC postponed finalizing the credit exposure reporting requirement. The Board believes that robust reporting of a covered company's credit exposures to other significant bank holding companies and financial companies is critical to ongoing risk management by covered companies, as well as to the Board's ongoing supervision of covered companies and financial stability responsibilities, and the FDIC's responsibility to resolve failed covered companies. However, the agencies also recognize that these reports would be most useful and complete if developed in conjunction with the Dodd-Frank Act's single counterparty credit exposure limits. *See* 12 U.S.C. 5365(e).

section 166 of the Dodd-Frank Act to covered companies. As noted above, covered companies are described in the Act as bank holding companies with total consolidated assets of $50 billion or more (which would include any foreign banking organization that has banking operations in the United States and that has global consolidated assets of $50 billion or more) and nonbank financial companies the Council has designated for supervision by the Board. The proposal incorporates this definition but, for reasons described below, at this time only covers U.S. bank holding companies and nonbank financial companies the Council has designated.

Under section 165(i)(2), the requirements to conduct annual stress tests apply to any financial company with more than $10 billion in total consolidated assets and that is regulated by a primary federal financial regulatory agency.[18] The Board, as the primary Federal financial regulatory agency for bank holding companies, savings and loan holding companies, and state member banks, proposes to apply the annual company-run stress test requirements to any bank holding company, savings and loan holding company,[19] and state member bank with more than $10 billion in total consolidated assets. Moreover, the requirement to establish a risk committee under section 165(h) of the Act applies to any publicly traded bank holding company with $10 billion or more in total consolidated assets.[20]

For purposes of the definition of a covered company, a bank holding company is deemed to have met the $50 billion asset criterion based on the average of the company's total consolidated assets as reported on its four most recent quarterly reports to the Board, i.e., the Consolidated Financial Statements for Bank Holding Companies (Federal Reserve Form FR Y–9C).[21] This calculation will be effective as of the due date of the bank holding company's most recent FR Y–9C.[22] Under the proposal, a bank holding company that becomes a covered company would remain a covered company until its total consolidated assets, as reported to the Board on a quarterly basis on the FR Y–9C, fall and remain below $50 billion for four consecutive quarters.

This proposal would apply the same set of enhanced prudential standards to covered companies that are bank holding companies and covered companies that are nonbank financial companies. As noted above, however, in applying the enhanced prudential standards to covered companies, the Board may determine, on its own or in response to a recommendation by the Council, to tailor the application of the enhanced standards to different companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities, size, and any other risk-related factors that the Board deems appropriate.[23]

The Board notes that this authority will be particularly important in applying the enhanced standards to specific nonbank financial companies designated by the Council that are organized and operated differently from banking organizations.[24] Under the Act,[25] the Council generally may determine that a nonbank financial company, i.e., a company predominantly engaged in financial activities, should be subject to supervision by the Board and the enhanced standards established pursuant to section 165 and the early remediation requirements established pursuant to section 166, if material financial distress at such company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States. As such, the types of business models, capital structures, and risk profiles of companies that would be subject to designation by the Council could vary significantly.

While this proposal was largely developed with large, complex bank holding companies in mind, some of the standards nonetheless provide sufficient flexibility to be readily implemented by covered companies that are not bank holding companies. In prescribing prudential standards under section 165(b)(1), the Board would to take into account differences among bank holding companies and nonbank financial companies supervised by the Board.[26] Following designation of a nonbank financial company by the Council, the Board would thoroughly assess the business model, capital structure, and risk profile of the designated company to determine how the proposed enhanced prudential standards and early remediation requirements should apply. The Board may, by order or regulation, tailor the application of the enhanced standards to designated nonbank financial companies on an individual basis or by category, as appropriate.[27]

The Board solicits comment on alternative approaches for applying the enhanced prudential standards and the early remediation requirements the Dodd-Frank Act requires to nonbank covered companies.

Question 1: What additional characteristics of a nonbank covered company—in addition to its business model, capital structure, and risk profile—should the Board consider when determining how to apply the enhanced standards and the early remediation requirements to such a company?

Question 2: What are the potential unintended consequences and burdens associated with subjecting a nonbank covered company to the enhanced prudential standards and the early remediation requirements?

The current proposal would apply only to U.S.-based bank holding companies that are covered companies and to nonbank covered companies, and would not apply to foreign banking

[18] 12 U.S.C. 5365(i)(2). The Dodd-Frank Act defines primary financial regulatory agency in section 2 of the Act. *See* 12 U.S.C. 5301(12). The Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation have consulted on rules implementing section 165(i)(2).

[19] As discussed below, the Board proposes to delay the effective date of the portion of the proposal implementing section 165(i)(2) for savings and loan holding companies until such time as the Board has implemented consolidated capital rules for savings and loan holding companies.

[20] 12 U.S.C. 5365(h).

[21] With respect to a company that has been a bank holding company for less than four quarters, the Board would refer to the company's financial statements from quarters preceding the time that it began reporting on the FR Y–9C. For example, if a bank holding company had been reporting on the FR Y–9C for only one quarter, the Board would refer to its GAAP financial statements for the prior three quarters for purposes of calculating its average total consolidated assets.

[22] For purposes of subpart E of the proposed rule, the same calculation approach would be applied to any bank holding company in determining when it becomes an over $10 billion bank holding company. For purposes of subpart G of the proposed rule, the same calculation approach would be applied to any bank holding company, savings and loan holding company, or state member bank in determining when it becomes an over $10 billion company.

[23] 12 U.S.C. 5365(a)(2).

[24] To date, the Council has not designated any nonbank financial company for supervision by the Board.

[25] *See* 12 U.S.C. 5315. *See also* 76 FR 64264 (Oct. 18, 2011) (proposing to implement the Council's authority under section 113 of the Dodd-Frank).

[26] *See* 12 U.S.C. 5365(b)(3). The factors the Board must take into consideration in prescribing the enhanced standards under section 165(b)(1) are described above. *See supra* note 13. Under section 171 of the Dodd-Frank Act, the Board is required to impose the same minimum risk-based and leverage capital requirements on bank holding companies and nonbank covered company as it imposes on insured depository institutions. 12 U.S.C. 5371.

[27] Following designation of nonbank financial companies by the FSOC, the Board also would consider the appropriate risk-based capital treatment of asset types with no explicit treatment under the current risk-based capital rules. *See generally* 76 FR 37620 (June 28, 2011).

organizations. As discussed above, however, foreign banking organizations that have U.S. banking operations (whether a U.S. branch, a U.S. agency, or a U.S. subsidiary bank holding company or bank) and have global total consolidated assets [28] of $50 billion or more are subject to sections 165 and 166 of the Dodd-Frank Act. Section 165 instructs the Board, in applying the enhanced prudential standards of section 165 to foreign financial companies, to give due regard to the principle of national treatment and equality of competitive opportunity, and to take into account the extent to which the foreign company is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States.

Determining how to apply the enhanced prudential standards and early remediation framework established by the Dodd-Frank Act to foreign banking organizations in a manner consistent with the purposes of the statute and the Board's existing framework of supervising foreign banking organizations is difficult. The scope of enhanced prudential standards required under sections 165 and 166 extends beyond the set of prudential standards that are part of existing international agreements, and foreign banking organizations are subject to home country regulatory and supervisory regimes that employ a wide variety of approaches to prudential regulation. Further, foreign banking organizations operate in the United States through diverse structures, complicating the consistent application of the enhanced standards to the U.S. operations of a foreign banking organization. Finally, the risk posed to U.S. financial stability by foreign banking organizations that are subject to sections 165 and 166 varies widely. The Board is actively developing a proposed framework for applying the Act's enhanced prudential standards and early remediation requirement to foreign banking organizations, and expects to issue this framework for public comment shortly.

While sections 165 and 166 generally do not apply to savings and loan holding companies, section 165(i)(2) requires the Board to issue regulations pursuant to which any financial company for which the Board is the primary federal financial regulatory agency and that has more than $10 billion in total consolidated assets must conduct an annual stress test.[29] Thus, the proposal would apply annual company-run stress test requirements to any savings and loan holding company with more than $10 billion in consolidated assets. However, because the annual stress test requirement, as proposed, is predicated on a company being subject to consolidated capital requirements, this proposal would delay the effective date of the company-run stress test requirements for savings and loan holding companies until the Board has established risk-based capital requirements for savings and loan holding companies.

While the remaining parts of section 165 and section 166 do not specifically apply to savings and loan holding companies, the Board, as the primary supervisor of savings and loan holding companies, has the authority under the Home Owners' Loan Act to apply the enhanced standards to savings and loan holding companies to ensure their safety and soundness.[30] The Board intends to issue a separate proposal for notice and comment to initially apply the enhanced standards and early remediation requirements to all savings and loan holding companies with substantial banking activities—i.e., any savings and loan holding company that (i) has total consolidated assets of $50 billion or more; and (ii)(A) has savings association subsidiaries which comprise 25 percent or more of such savings and loan holding company's total consolidated assets, or (B) controls one or more savings associations with total consolidated assets of $50 billion or more. The Board believes that applying the enhanced prudential standards of this proposal to savings and loan holding companies that satisfy these criteria is an important aspect of ensuring their safety and soundness. The Board also may determine to apply the enhanced standards to any savings and loan holding company, if appropriate to ensure the safety and soundness of such company, on a case-by-case basis.

As is the case with stress testing, many of the other enhanced standards are predicated on a covered company being subject to consolidated capital requirements. Therefore, similar to the approach with respect to applying the annual company-run stress test requirement to savings and loan holding companies, the Board intends to impose enhanced prudential standards and early remediation requirements on savings and loan holding companies with substantial banking activities once the Board has established risk-based capital requirements for savings and loan holding companies.

Question 3: The Board seeks comment on its proposed approach to the application of the company-run stress test requirements, including the delayed effective date, to savings and loan holding companies. Also, what additional or alternative criteria should the Board consider for determining which savings and loan holding companies initially would be subject to the enhanced prudential standards and early remediation requirements?

B. Risk-Based Capital Requirements and Leverage Limits

The recent financial crisis exposed significant weaknesses in the regulatory capital requirements for large banking companies. The amount of capital held by many large, complex banking companies proved to be inadequate to cover the risks that had accumulated in the companies. For certain exposure types, such as trading positions, OTC derivatives, and securitization and re-securitization exposures, it became evident that capital requirements did not adequately cover the risk of loss from those activities. In addition, it became apparent that some of the instruments that qualified as tier 1 capital for banking companies, the core measure of capital adequacy, were not truly loss absorbing.

Section 165(b)(1)(A)(i) of the Act directs the Board to establish enhanced risk-based capital and leverage standards for covered companies to address these weaknesses. The Board plans to meet this statutory requirement with a two-part effort. Under this proposal, the Board would subject all covered companies to the Board's capital plan rule, which currently requires all bank holding companies with $50 billion or more in consolidated assets to submit an annual capital plan to the Board for review (capital plan rule).[31] Under the capital plan rule, covered companies would have to demonstrate to the Board that they have robust, forward-looking capital planning processes that account for their unique risks and that permit continued operations during times of economic

[28] For a foreign banking organization subject to section 165 of the Dodd-Frank Act, total consolidated assets would be based on the foreign banking organization's Capital and Asset Reports for Foreign Banking Organizations (Federal Reserve Form FR Y–7Q).

[29] Among entities covered by this part of the Dodd-Frank are state member banks, bank holding companies, and savings and loan holding companies with total consolidated assets of $10 billion or more.

[30] *See* 12 U.S.C. 1467a(g) (authorizing the Board to issue such regulations and orders as the Board deems necessary or appropriate to administer and carry out the purposes of section 10 of the Home Owners' Loan Act).

[31] 12 CFR 225.8.

and financial stress. The supervisory and company-run stress tests that are part of this proposal and discussed in detail below are important aspects of this forward-looking process.[32] The Board expects that a covered company will integrate into its capital plan, as one part of the underlying analysis, the results of the company-run stress tests conducted in accordance with section 165(i)(2) of the Dodd-Frank Act and the Board's proposed implementing rules. The results of those stress tests, as well as the annual supervisory stress test conducted by the Board under section 165(i)(1) of the Dodd-Frank, will be considered in the evaluation of a covered company's capital plan.

Under the capital plan rule, covered companies would be required to demonstrate to the Board their ability to maintain capital above existing minimum regulatory capital ratios and above a tier 1 common ratio of 5 percent under both expected and stressed conditions over a minimum nine-quarter planning horizon.[33] Covered companies with unsatisfactory capital plans would face limits on their ability to make capital distributions.

The Board intends to supplement the enhanced risk-based capital and leverage requirements included in this proposal with a subsequent proposal to implement a quantitative risk-based capital surcharge for covered companies or a subset of covered companies. Over the past few years, the Federal Reserve and other U.S. federal banking agencies have worked together with other members of the Basel Committee on Banking Supervision (BCBS) to strengthen the regulatory capital regime for internationally active banks and develop a framework for a risk-based capital surcharge for the world's largest, most interconnected banking companies. The new regime for internationally active banks, known as Basel III,[34] materially improves the quality of regulatory capital and introduces a new minimum common equity requirement. Basel III also raises the numerical minimum capital requirements and introduces capital conservation and countercyclical buffers to induce banking organizations to hold capital in excess of regulatory minimums. In addition, Basel III establishes for the first time an international leverage standard for internationally active banks. The Board is working with the other U.S. banking regulators to implement the Basel III capital reforms in the United States.

Building on the Basel III reforms, the BCBS published a document in November 2011 entitled *Global systemically important banks: Assessment methodology and the additional loss absorbency requirement* (BCBS framework), which set forth an additional capital requirement for global systemically important banks (G–SIBs).[35]

The Basel III and BCBS frameworks, once implemented in the United States, are expected to significantly enhance risk-based capital and constrain the leverage of covered companies and will be a key part of the Board's overall approach to enhancing the risk-based capital and leverage standards applicable to these companies in accordance with section 165 of the Dodd-Frank Act. The Board intends to propose a quantitative risk-based capital surcharge in the United States based on the BCBS approach consistent with the BCBS's implementation timeframe. The forthcoming proposal would contemplate adopting implementing rules in 2014, and requiring G–SIBs to meet the capital surcharges on a phased-in basis from 2016–2019.

C. Liquidity Requirements

The financial crisis revealed significant weaknesses in liquidity buffers and liquidity risk management practices throughout the financial system that directly contributed to the failure or near failure of many companies and exacerbated the crisis. Section 165(b)(1)(A)(ii) addresses inadequacies in the existing regulatory liquidity requirements by directing the Board to establish liquidity standards for covered companies. Similar to enhanced risk-based capital and leverage requirements, the Federal Reserve intends to implement this statutory requirement through a multi-stage approach.

This proposal would subject covered companies to a set of enhanced liquidity risk management standards, including liquidity stress testing.[36] The proposal builds on guidance previously adopted by the Board and other U.S. federal banking agencies and proposes higher liquidity risk management standards for covered companies.[37]

The proposal would require covered companies to conduct internal stress tests at least monthly to measure their liquidity needs at 30-day, 90-day and one-year intervals during times of instability in the financial markets and to hold liquid assets that would be sufficient to cover 30-day stressed net cash outflows under their internal stress scenarios. Covered companies also would be required to meet specified corporate governance requirements around liquidity risk management, to project cash flow needs over various time horizons, to establish internal limits on certain liquidity metrics, and

[32] In June 2011, the Board, along with the OCC and FDIC, issued for comment proposed supervisory guidance on stress testing for banking organizations with more than $10 billion in total assets. 76 FR 35072 (June 15, 2011). That proposed guidance contains principles for an effective stress testing framework that would cover an organization's various stress testing activities, including capital and liquidity stress testing. The agencies issued the proposed guidance for comment separately from this proposal because the proposed guidance is intended to apply broadly to organizations' use of stress testing in overall risk management, not just to capital and liquidity stress testing, as is the case for the requirements of this proposed rule. The agencies are considering comments on the proposed guidance and expect to issue a final version shortly. The Board expects that companies would follow the principles set forth in the final stress testing guidance—as well as with other relevant supervisory guidance—when conducting capital and liquidity stress testing in accordance with requirements in this proposed rule.

[33] Under the capital plan rule, tier 1 common is defined as tier 1 capital less non-common elements in tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities. Specifically, non-common elements include the following items captured in the FR Y–9C reporting form: Schedule HC, line item 23 net of Schedule HC–R, line item 5; and Schedule HC–R, line items 6a, 6b, and 6c.

[34] *See* Basel Committee on Banking Supervision, Basel III: A global regulatory framework for more resilient banks and banking systems (revised June 2011), available at *http://www.bis.org/publ/bcbs189.htm* (hereinafter Basel III framework). *See also* Basel Committee on Banking Supervision, *Basel III: International framework for liquidity risk measurement, standards and monitoring* (December 2010), available at *www.bis.org/publ/bcbs188.htm* (hereinafter Basel III liquidity framework); *Enhancements to the Basel II framework* (July 2009), available at *www.bis.org/publ/bcbs157.htm;* and *Revisions to the Basel II market risk framework* (July 2009), available at *www.bis.org/publ/bcbs158.htm.*

[35] *See* Basel Committee on Banking Supervision, *Global systemically important banks: Assessment methodology and the additional loss absorbency requirement* (November 2011), available at *http://www.bis.org/publ/bcbs207.htm* (hereinafter BCBS capital surcharge framework).

[36] *See supra* note 32.

[37] Supervision and Regulation Letter SR 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management (March 17, 2010), *available at http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.pdf;* 75 FR 13656 (March 22, 2010). The Board, the Office of the Comptroller of the Currency (OCC), the FDIC, the Office of Thrift Supervision, the National Credit Union Administration, and the Conference of State Bank Supervisors jointly issued the Interagency Liquidity Risk Policy Statement. The Interagency Liquidity Risk Policy Statement incorporates principles of sound liquidity risk management that the agencies have issued in the past, and supplements them with the principles of sound liquidity risk management established by the Basel Committee on Bank Supervision (Basel Committee) in its document entitled ''Principles for Sound Liquidity Management and Supervision.'' *Principles for Sound Liquidity Risk Management and Supervision* (September 2008), *available at https://ww.bis.org/publ/bcbs144.htm.*

to maintain a contingency funding plan (CFP) that identifies potential sources of liquidity strain and alternative sources of funding when usual sources of liquidity are unavailable.

In addition to the enhanced liquidity risk management standards included in this proposal, the Federal Reserve and other U.S. federal banking agencies have been working with the BCBS over the past few years to develop quantitative liquidity requirements to increase the capacity of internationally active banking firms to absorb shocks to funding relative to the liquidity risks they face. The BCBS approved two new liquidity rules as part of the Basel III reforms in December 2010. The first rule is a Liquidity Coverage Ratio (LCR), which would require banks to hold an amount of high-quality liquid assets sufficient to meet expected net cash outflows over a 30-day time horizon under a supervisory stress scenario. The second rule is the Net Stable Funding Ratio (NSFR), which would require banks to enhance their liquidity risk resiliency out to one year. Under the terms of Basel III, global banks are required to comply with the LCR by 2015 and with the NSFR by 2018.

The Basel III liquidity rules are currently in an international observation period as the U.S. federal banking agencies and other BCBS members assess the potential impact of the rules on banks and various financial markets. The Board intends, in conjunction with other federal banking agencies, to implement these standards in the United States through one or more separate rulemakings. Through implementation of these standards in the United States, the Board anticipates that the Basel III liquidity rules would then become a central component of the enhanced liquidity requirements for covered companies, or a subset of covered companies, under section 165 of the Dodd-Frank Act.

D. Single-Counterparty Credit Limits

As demonstrated in the crisis, interconnectivity among major financial companies poses risks to financial stability. The effects of one large financial company's failure or near collapse may be transmitted and amplified by the bilateral credit exposures between large, systemically important companies. The financial crisis also revealed inadequacies in the structure of the U.S. regulatory framework for single-counterparty credit limits. Although banks were subject to single-borrower lending and investment limits, these limits did not apply to bank holding companies on a consolidated basis and did not adequately cover credit exposures generated by derivatives and some securities financing transactions.[38]

In an effort to address concentration risk among large financial institutions, section 165(e) of the Dodd-Frank Act directs the Board to establish single-counterparty credit limits for covered companies in order to limit the risks that the failure of any individual company could pose to a covered company.[39] This section directs the Board to prescribe regulations that prohibit covered companies from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus of the covered company.[40] This section also authorizes the Board to lower the 25 percent threshold if necessary to mitigate risks to the financial stability of the United States.[41]

Credit exposure to a company is defined broadly in section 165(e) of the Act to cover all extensions of credit to the company; all repurchase and reverse repurchase agreements, and securities borrowing and lending transactions, with the company; all guarantees and letters of credit issued on behalf of the company; all investments in securities issued by the company; counterparty credit exposure to the company in connection with derivative transactions; and any other similar transaction that the Board determines to be a credit exposure for purposes of section 165(e).[42] Section 165(e) also grants authority to the Board to exempt transactions from the definition of the term ''credit exposure'' if the Board finds that the exemption is in the public interest and consistent with the purposes of the subsection.[43]

The proposal implements these statutory provisions by defining key terms, such as covered company, unaffiliated counterparty, and capital stock and surplus. The proposal also targets the mutual interconnectedness of the largest financial companies by setting a stricter 10 percent limit for credit exposure between a covered company and a counterparty that each either have more than $500 billion in total consolidated assets or are a nonbank covered company. In addition, the proposal provides rules for measuring the amount of credit exposure generated by the various types of credit transactions. Notably, the proposal would allow covered companies to reduce their credit exposure to a counterparty for purposes of the limit by obtaining credit risk mitigants such as collateral, guarantees, and credit derivative hedges. The proposal describes the types of collateral, guarantees and derivative hedges that are eligible under the rule and provides valuation rules for reflecting such credit risk mitigants.

E. Risk Management and Risk Committee Requirements

Sound, enterprise-wide risk management by covered companies reduces the likelihood of their material distress or failure and thus promotes financial stability. In addition to adopting enhanced risk management standards for covered companies, the Board is directed by section 165(h) to require publicly traded covered companies and publicly traded bank holding companies with $10 billion or more in total consolidated assets to establish a risk committee of the board of directors that is responsible for oversight of enterprise-wide risk management, is comprised of an appropriate number of independent directors, and includes at least one risk management expert.

The proposal would require all covered companies to implement robust enterprise-wide risk management practices that are overseen by a risk committee of the board of directors and chief risk officer with appropriate levels of independence, expertise and stature. The proposal also would require any publicly traded bank holding company with $10 billion or more in total consolidated assets and that is not a covered company to establish a risk committee.

F. Stress Testing Requirements

The crisis also revealed weaknesses in the stress testing practices of large banking organizations, as well as gaps in the regulatory community's approach to assessing capital adequacy. During the height of the crisis, the Federal Reserve began stress testing the capital adequacy of large, complex bank holding companies as a forward-looking exercise designed to estimate losses, revenues, regulatory capital ratios, and reserve needs under various macroeconomic

[38] Section 610 of the Dodd-Frank Act amends the term ''loans and extensions of credit'' for purposes of the lending limits applicable to national banks to include any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. *See* Dodd-Frank Act, Public Law 111–203, § 610, 124 Stat. 1376, 1611 (2010). As discussed in more detail below, these types of transactions are also all made subject to the single counterparty credit limits of section 165(e). 12 U.S.C. 5365(e)(3).

[39] *See* 12 U.S.C. 5365(e)(1).

[40] 12 U.S.C. 5365(e)(2).

[41] *See id.*

[42] *See* 12 U.S.C. 5365(e)(3).

[43] *See* 12 U.S.C. 5365(e)(5)–(6).

scenarios.[44] By looking at the broad needs of the financial system and the specific needs of individual companies, these stress tests provided valuable information to market participants and had an overall stabilizing effect.

Section 165(i)(1) directs the Board to implement rules requiring the Federal Reserve, in coordination with the appropriate primary Federal regulatory agencies and the Federal Insurance Office, to conduct an annual evaluation of whether each covered company has sufficient capital to absorb losses as a result of adverse economic conditions (supervisory stress tests). The Board is also required to publish a summary of the results of the supervisory stress tests. In addition, section 165(i)(2) directs the Board to implement rules requiring each covered company to conduct its own semi-annual stress tests and any state member bank, bank holding company or savings and loan holding company with more than $10 billion in total consolidated assets (that is not a covered company) to conduct its own annual stress tests (company-run stress tests). Companies must also publish a summary of the results of the company-run stress tests.

The proposal would implement these statutory provisions by requiring the Federal Reserve to conduct annual supervisory stress tests of covered companies under baseline, adverse, and severely adverse scenarios and by requiring companies that are subject to company-run stress test requirements to conduct their own capital adequacy stress tests on an annual or semi-annual basis, as applicable. Under the proposal, the Board would publicly disclose information on the company-specific results of the supervisory stress tests.

G. Debt-to-Equity Limits for Certain Covered Companies

Section 165(j) of the Dodd-Frank Act provides that the Board must require a covered company to maintain a debt-to-equity ratio of no more than 15-to-1, upon a determination by the Council that (i) such company poses a grave threat to the financial stability of the United States and (ii) the imposition of such a requirement is necessary to mitigate the risk that the company poses to U.S. financial stability. The proposal establishes procedures to notify a covered company that the Council has made a determination under section 165(j) that the company must comply with the 15-to-1 debt-to-equity ratio requirement, defines ''debt'' and ''equity'' for purposes of calculating compliance with the ratio, and provides an affected company with a transition period to come into compliance with the ratio.

H. Early Remediation Framework

The financial crisis revealed that the condition of large banking organizations can deteriorate rapidly even during periods when their reported regulatory capital ratios are well above minimum requirements. The crisis also revealed that financial companies that addressed incipient financial problems swiftly and decisively performed much better than companies that delayed remediation work.

Section 166 of the Dodd-Frank Act directs the Board to prescribe regulations to provide for the early remediation of financial distress at covered companies so as to minimize the probability that the company will become insolvent and to reduce the potential harm of the insolvency of a covered company to the financial stability of the United States. The regulation must use measures of the financial condition of a covered company, including regulatory capital ratios, liquidity measures, and other forward-looking indicators as triggers for remediation actions. Remediation requirements must increase in stringency as the financial condition of a covered company deteriorates. Remedies must include, in the initial stages of financial decline of the covered company, limits on capital distributions, acquisitions, and asset growth. Remedies in the later stages of financial decline of the covered company must include a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

The proposed rule implementing section 166 establishes a regime for the early remediation of financial distress at covered companies that includes several forward-looking triggers designed to identify emerging or potential issues before they develop into larger problems. In addition to regulatory capital triggers, the proposed rule includes triggers based on supervisory stress test results, market indicators and weaknesses in enterprise-wide and liquidity risk management. The proposed rule also describes the regulatory restrictions that a covered company must comply with in each remedial stage.

I. Transition Arrangements and Ongoing Compliance

Another important aspect of the proposal is the timing of initial compliance and ongoing reporting to the Board in conjunction with the proposed enhanced standards. In order to reduce the burden on covered companies of coming into initial compliance with the standards, the Board is proposing to provide meaningful phase-in periods. In general, a company that is a covered company on the effective date of the final rule would be subject to the enhanced prudential standards beginning on the first day of the fifth quarter following the effective date of the final rule. A company that becomes a covered company after the effective date of the final rule generally would become subject to the enhanced standards beginning on the first day of the fifth quarter following the date that it became a covered company. For a variety of reasons, the proposed rule provides different transition arrangements for enhanced risk-based capital and leverage requirements, single-counterparty credit limits and stress testing requirements. Transition arrangements for these standards are discussed in the relevant sections of the preamble below.

To reduce the burden of ongoing compliance with the enhanced standards, the Board is also proposing to sequence the timing of required submissions. For example, the requirement that covered companies conduct stress tests is specifically timed to coordinate with the reporting requirements associated with the capital plan, and the capital plan and stress test requirements are specifically timed to minimize overlap with resolution plan update requirements.[45]

Question 4: Are there alternative approaches the Board should consider to phase in the proposed enhanced prudential standards for either bank holding companies or nonbank financial companies?

J. Reservation of Authority

To address situations where compliance with the requirements of the proposed rule would not sufficiently mitigate the risks to U.S. financial

[44] In early 2009, the Federal Reserve led the Supervisory Capital Assessment Program (SCAP) as a key element of the plan to stabilize the U.S. financial system. Building on SCAP and other supervisory work coming out of the crisis, the Federal Reserve initiated the Comprehensive Capital Analysis and Review (CCAR) in late 2010 to evaluate the internal capital planning processes of large, complex bank holding companies. The CCAR represented a substantial strengthening of previous approaches to ensuring that large firms have thorough and robust processes for managing and allocating their capital resources. The CCAR also focused on the risk measurement and management practices supporting firms' capital adequacy assessments, including their ability to deliver credible inputs to their loss estimation techniques.

[45] *See* 12 CFR 243.3.

stability posed by the failure or material financial distress of a covered company, the proposed rule includes a reservation of authority provision. This reservation of authority would permit the Board to implement additional or further enhanced prudential standards for a covered company, including, but not limited to, additional capital or liquidity requirements, corporate governance standards, concentration limits, stress testing requirements, activity limits, or other requirements or restrictions that the Board may deem necessary to carry out the purposes of the proposal or section 165 of the Dodd-Frank Act.[46] The proposed rule also specifies that the Board may determine that a bank holding company that is not a covered company shall be subject to one or more of the standards established under the proposed rule if the Board determines that doing so is necessary or appropriate to protect the safety and soundness of the company or to promote financial stability.

In addition, the proposed rule would specifically state that nothing in the rule would limit the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, deficient capital or liquidity levels, or violations of law.

K. Common Definitions

A number of terms are used throughout the proposed rule. Some of these terms are generally given the same meaning as their definitions under other regulations issued by the Board. For example, under the proposal, the term ''company'' would be defined as a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization. The term ''bank holding company'' generally would have the same meaning as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).[47] Additional common definitions are detailed in the proposed rule.

The Board solicits comment on these proposed definitions.

III. Risk-Based Capital Requirements and Leverage Limits

A. Background

Section 165 of the Dodd-Frank Act directs the Board to establish risk-based capital and leverage standards for covered companies that are more stringent than the risk-based capital and leverage standards applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States and increase in stringency based on the systemic footprint of the company.

As discussed above, in addition to implementing the broader Basel III capital reforms, the Board seeks to implement enhanced risk-based capital and leverage standards for covered companies in a two-stage process: (i) In this proposal, the application of the Board's capital plan rule to covered companies, including the requirement for covered companies to maintain capital above 5 percent tier 1 common risk-based capital ratio under both expected and stressed conditions; and (ii) in a separate future proposal, the introduction of a quantitative risk-based capital surcharge for covered companies or a subset of covered companies based on the BCBS capital surcharge framework for G–SIBs.

B. Overview of the Proposed Rule

1. Capital Planning and Minimum Capital Requirements

Under the proposal, all covered companies would be required to comply with, and hold capital commensurate with, the requirements of any regulations adopted by the Board relating to capital plans and stress tests. Thus, in addition to the stress testing requirements that are part of this proposal, this subpart would require all covered companies to comply with the capital plan rule recently adopted by the Board.[48] In addition, the Board is proposing that nonbank covered companies be subject to the same minimum risk-based and leverage capital requirements that apply to covered companies that are bank holding companies.

As discussed further below, the capital plan rule would enhance minimum capital standards for covered companies in several dimensions, including requiring firms to demonstrate capital adequacy over a minimum nine-quarter planning horizon under both expected and stressed conditions.[49] The Board believes that the safety and soundness rationale that underlies the capital plan rule's enhanced risk-based capital and leverage standards for bank holding companies is also applicable to nonbank covered companies, and that compliance with this rule by such companies would help to promote their ongoing financial stability. By requiring covered companies to have robust capital plans and to hold capital commensurate with the risks they would face under stressful financial conditions, and by limiting capital distributions under certain circumstances, the proposed rule would reduce the probability of the failure of a covered company.

The current capital plan rule imposes enhanced risk-based and leverage requirements on large bank holding companies in several ways. The rule requires such companies to submit board-approved annual capital plans to the Federal Reserve in which they demonstrate their ability to maintain capital above the Board's minimum risk-based capital ratios (total capital ratio of 8 percent, tier 1 capital ratio of 4 percent) and tier 1 leverage ratio (4 percent) under both baseline and stressed conditions over a minimum nine-quarter, forward-looking planning horizon. Each such plan must include a discussion of the bank holding company's sources and uses of capital reflecting the risk profile of the firm over the planning horizon. In addition, these bank holding companies must demonstrate the ability to maintain a minimum tier 1 common risk-based capital ratio of 5 percent over the same planning horizon (under both baseline and stressed conditions).[50] The stressed scenarios must include any scenarios provided by the Federal Reserve (such as those discussed in section VII of this preamble) as well as at least one stressed scenario developed by the bank holding company appropriate to its business model. A capital plan must

[46] 12 U.S.C. 5365(b)(1)(B)(iv).

[47] Control would have a different meaning under the proposed rules concerning single-counterparty credit limits.

[48] 12 CFR 225.8. *See* 76 FR 74631 (December 1, 2011). The capital plan rule currently applies to all U.S. bank holding companies with $50 billion or more in total consolidated assets (large bank holding companies).

[49] At present, the Board's rules for calculating minimum capital requirements are found at 12 CFR part 225, appendix A (general risk-based capital rule), 12 CFR part 225, appendix D (leverage rule), 12 CFR part 225, appendix E (market risk rule), and 12 CFR part 225, appendix G (advanced approaches risk-based capital rule). A firm that met the applicability thresholds under the market risk rule or the advanced approaches risk-based capital rule would be required to use those rules to calculate its minimum risk-based capital requirements in addition to the general risk-based capital requirements and the leverage rule.

[50] Under the capital plan rule, tier 1 common is defined as tier 1 capital less non-common elements in tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities. Specifically, non-common elements include the following items captured in the FR Y–9C reporting form: Schedule HC, line item 23 net of Schedule HC–R, line item 5; and Schedule HC–R, line items 6a, 6b, and 6c.

also include a description of all planned capital actions over the planning horizon.

In its capital plan, a large bank holding company must provide a detailed description of its process for assessing capital adequacy, including a description of how it will, under stressful conditions, maintain capital commensurate with its risks and continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary. A large bank holding company that is unable to satisfy these requirements generally may not make any capital distributions until it provides a satisfactory capital plan to the Federal Reserve.[51]

In addition, a large bank holding company must obtain prior approval from the Federal Reserve before making a capital distribution in certain circumstances where the Federal Reserve had provided a non-objection to the large bank holding company's capital plan. The bank holding company would be required to include certain information in the request, which may include, among other things, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data.

As stated above, a nonbank covered company would be subject to the capital plan rule under this proposal. While a bank holding company that becomes a covered company over time is subject to the requirements of the capital plan rule as provided for in that rule,[52] a nonbank covered company would become subject to the requirements of the capital plan rule in the calendar year that it was designated by the Council, if the nonbank covered company was designated by the Council more than 180 days before September 30 of that calendar year.

In addition, 180 days following its designation by the Council, a nonbank covered company would be subject to minimum risk-based capital and leverage requirements. A nonbank covered company would be required to calculate its minimum risk-based and leverage capital requirements as if it were a bank holding company in accordance with any minimum capital requirements established by the Board for bank holding companies.[53] Accordingly, the nonbank covered company would be required to hold capital sufficient to meet (i) a tier 1 risk based capital ratio of 4 percent and a total risk-based capital ratio of 8 percent, as calculated according to the Board's risk-based capital rules,[54] and (ii) a tier 1 leverage ratio of 4 percent as calculated under the leverage rule.[55] Finally, each nonbank covered company would be required to report to the Board on a quarterly basis its risk-based capital and leverage ratios. Upon ascertaining that it had failed to meet any of its minimum risk-based or leverage requirements, a nonbank covered company would be required to notify the Board immediately.[56]

Under the proposed rules' reservation of authority, the Board may require any covered company to hold additional capital or be subject to other requirements or restrictions if it determines that compliance with the requirements of the proposal does not sufficiently mitigate risks to U.S. financial stability posted by the failure or material financial distress of the covered company.

The Board seeks comment on all aspects of the proposed enhanced risk-based capital and leverage requirements.

In particular, the Board seeks comment on the appropriateness of requiring nonbank covered companies to have the same capital planning and stress testing, and regulatory capital requirements as bank holding companies.

Question 5: What factors should the Board consider in deciding whether to impose different capital planning or stress testing requirements on nonbank covered companies?

Question 6: What alternative enhanced capital requirements for nonbank covered companies should the Board consider? Should the Board consider a longer or shorter phase-in period for capital requirements for nonbank covered companies?

Conforming Amendment to Section 225.8 of Regulation Y

To make the applicability of the Board's capital plan rule consistent with the applicability of the proposed enhanced capital standards under this proposed rule, the Board is considering whether to amend the capital plan rule to provide that a bank holding company subject to that rule would remain subject to that rule until its total consolidated assets fall below $50 billion for four consecutive calendar quarters.

2. Quantitative Risk-Based Capital Surcharge

In November 2011, the BCBS agreed to require G–SIBs to hold an additional amount of common equity above the regulatory minimums to enhance their resiliency and ability to absorb losses under difficult economic conditions. The recently finalized BCBS framework establishes five capital surcharge categories, ranging from 100 to 350 basis points,[57] and allocates G–SIBs to a specific surcharge category based on a twelve-factor formula. The formula includes measures of size, interconnectedness, complexity, lack of substitutes and cross-border activity. The capital surcharge must be met with common equity only and would operate to expand the Basel III capital conservation buffer. The BCBS framework would phase-in the G–SIB surcharge requirement in equal increments from 2016 to 2019, in parallel with the capital conservation buffer.

Approximately 30 global banks would be subject initially to the G–SIB surcharge under the BCBS framework. The BCBS has noted that the number of banks subject to the framework, and the surcharge category associated with different banks, would evolve over time as the systemic risk profiles of different

[51] *See* section VII *supra* on the enhanced prudential requirement that a covered company conduct certain stress tests for explanation of the relation between this enhanced prudential capital requirement and the stress test requirement under section 165.

[52] *See generally* 12 CFR 225.8(b). The final capital plan rule provides that a bank holding company that becomes subject to the final rule by operation of the asset threshold after the 5th of January of a calendar year will not be subject until January 1 of the next calendar year to the final rule's requirement to file a capital plan with the Federal Reserve, resubmit a capital plan under certain circumstances, or to obtain prior approval of capital distributions in excess of those described in the firm's capital plan. A bank holding company would be subject to all other requirements under the capital plan rule immediately upon becoming subject to that rule.

[53] *See supra* note 49.

[54] 12 CFR part 225, appendix A and G.

[55] 12 CFR part 225, appendix D, section II.

[56] Under section 171 of the Dodd-Frank Act, the Board is required to impose minimum risk-based and leverage capital requirements on bank holding companies and nonbank covered companies that are not less than the generally applicable capital requirements it imposes on insured depository institutions. 12 U.S.C. 5371. The Board recognizes that some aspects of its capital requirements may not take into account the characteristics of activities and assets of nonbank covered companies that are impermissible for banks and bank holding companies. When a nonbank covered company is designated by the Council, the Board may consider whether any adjustments to the minimum capital requirements applicable to the nonbank covered company may be appropriate, within the limits of section 171 of the Dodd-Frank Act.

[57] Initially, G–SIBs would be placed in 1 of 4 categories, with surcharges ranging from 100 to 250 basis points and the fifth category, with an associated surcharge of 350 basis points, would be left empty in order to leave room to apply higher surcharges to G–SIBs that increase their systemic footprint further over time.

banks change. The BCBS expects to refine and update the framework in the coming years as additional analysis is performed.

The Board and other U.S. federal banking agencies worked closely with other members of the BCBS to develop the BCBS framework and the Board believes that it is consistent with the financial stability objectives of section 165 of the Dodd-Frank Act, including minimizing the threat to U.S. financial stability posed by systemically important financial companies. The Board believes that a U.S. capital surcharge framework based on the BCBS framework would meaningfully reduce the probability of failure of the largest, most complex financial companies and would minimize losses to the U.S. financial system and the economy if such a company should fail. A capital surcharge would help require that these companies account for the costs they impose on the broader financial system and would reduce the implicit subsidy they enjoy due to market perceptions of their systemic importance. The Board intends to issue a concrete proposal for implementation of a quantitative risk-based capital surcharge for covered companies, or a subset thereof, based on the BCBS approach consistent with the BCBS's implementation timeframe. The forthcoming proposal would contemplate adopting implementing rules in 2014, and requiring G–SIBs to meet the capital surcharges on a phased-in basis from 2016–2019.

Question 7: How should the Board implement the BCBS framework discussed above, or are there alternatives to the BCBS framework the Board should consider?

Question 8: What is the appropriate scope of application of a quantitative capital surcharge in the United States in light of section 165 of the Dodd-Frank Act? What adaptations to the BCBS framework, or alternative surcharge assessment methodologies, would be appropriate for determining a quantitative capital surcharge for covered companies that are not identified as global systemically important banks in the BCBS framework?

Question 9: If the BCBS framework were to be applied to nonbank covered companies, how should the framework be modified to capture the systemic footprint of those companies?

IV. Liquidity Requirements

A. Background

During the financial crisis that began in 2007, many solvent financial companies experienced significant financial stress because they did not manage their liquidity in a prudent manner. In some cases, these companies had difficulty in meeting their obligations as they became due because sources of funding became severely restricted. These events followed several years of ample liquidity in the financial system, during which liquidity risk management did not receive the same level of priority and scrutiny as management of other sources of risk. The rapid reversal in market conditions and availability of liquidity during the crisis illustrated how quickly liquidity can evaporate, and that illiquidity can last for an extended period, leading to a company's insolvency before its assets experience significant deterioration in value.

Many of the liquidity-related difficulties experienced by financial companies were due to lapses in basic principles of liquidity risk management. This problem was evident from the horizontal reviews of financial companies conducted by the Senior Supervisors Group (''SSG''), which comprises senior financial supervisors from seven countries.[58] The SSG found that failure of liquidity risk management practices contributed significantly to the financial crisis. In particular, the SSG noted that firms' inappropriate reliance on short-term sources of funding and in some cases, the repo market, as well as inaccurate measurements of funding needs and lack of effective contingency funding were key factors in the liquidity crises many firms faced.[59]

Given the direct link between liquidity risk management failures and the many strains on firms and the financial system experienced during the recent crisis, the Board believes that strong liquidity risk management is crucial to ensuring a company's resiliency during periods of financial market stress and that covered companies should be held to the highest liquidity standards, as well as capital standards.

The Board also believes establishing minimum quantitative liquidity standards will improve the capacity of firms to remain viable during a liquidity stress. The Basel III Liquidity Framework establishes minimum requirements for funding liquidity that are designed to promote the resilience of a banking organization's liquidity risk profile.[60] These minimum requirements are imposed through two ratios:

- A liquidity coverage ratio (LCR), which is designed to promote the short-term resiliency of a banking organization's liquidity risk profile by ensuring that it has sufficient high quality liquid resources to survive an acute stress scenario lasting for one month; and
- A net stable funding ratio (NSFR), which is designed to promote liquidity risk resilience over a longer time period and to create incentives for a banking organization to fund its activities with medium- and longer-term funding sources. The NSFR has a time horizon of one year, and is designed to provide a sustainable maturity structure of assets and liabilities.

Under the terms of Basel III, the LCR and NSFR are to be implemented by Basel Committee member countries by 2015 and 2018, respectively.

The Board intends to institute a liquidity regime for covered companies through a multi-stage process that would include a regulatory framework for strong liquidity risk management and quantitative liquidity requirements based on the Basel III liquidity ratios. In the first stage, covered companies would be subject to enhanced liquidity risk management standards under this proposal. The proposal builds on the core provisions of the Board's Supervision and Regulation (SR) letter 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management issued in March 2010 (Interagency Liquidity Risk Policy Statement).[61] As discussed in detail below, the proposed rules would require a covered company to take a number of prudential steps to manage liquidity risk. Significantly, the proposed rules introduce liquidity stress test requirements for covered companies and require them to maintain liquid assets sufficient to meet projected net cash flows under the stress tests. The proposed rules would also require a covered company to generate comprehensive cash flow projections, to establish and monitor its liquidity risk tolerance, and maintain contingency plans for funding where normal sources of funding may not be available.

The Board believes liquidity requirements are vitally important to the

[58] *See* Senior Supervisors Group, *Observations on Risk Management Practices During the Recent Market Turbulence* (March 2008), *available at http://www.newyorkfed.org/newsevents/news/banking/2008/SSG_Risk_Mgt_doc_final.pdf* (hereinafter 2008 SSG Report).

[59] *See* Senior Supervisors Group, *Risk Management Lessons from the Global Banking Crisis of 2008* (October 2009), *available at http://www.newyorkfed.org/newsevents/news_archive/banking/2009/SSG_report.pdf* (hereinafter 2009 SSG Report).

[60] Basel Committee on Bank Supervision, *Basel III: International Framework for Liquidity Risk Measurement, Standards, and Monitoring* (December 20, 2010), *available at www.bis.org/publ/bcbs188.htm.*

[61] *See supra* note 37.

overall goals of section 165 of the Dodd-Frank Act, to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial companies. The liquidity requirements in this proposal are also more stringent than liquidity standards applied to nonbank financial companies and bank holding companies that do not present similar risks to financial stability. Currently, the Board oversees liquidity risk management at bank holding companies primarily through supervisory guidance, and generally does not impose specific regulatory liquidity requirements on bank holding companies. The proposed rules would require covered companies to implement liquidity risk management practices that are encouraged, but not required, for non-covered companies.

The requirements of the proposed rule are also designed to increase in stringency based on the systemic footprint of a company. For example, a covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors would be considered in: (i) Setting the liquidity risk tolerance of the covered company; (ii) determining the amount of detail provided in cash flow projections; (iii) tailoring liquidity stress testing to the covered company; (iv) setting the size of the liquidity buffer; (v) formulating the contingency funding plan; and (vi) setting the size of the specific limits on potential sources of liquidity risk. In addition, the Board would reserve its authority to require a covered company to be subject to additional or further enhanced prudential standards if it determines that compliance with the rule does not sufficiently mitigate the risks to U.S. financial stability posed by the failure or material financial distress of the covered company.

In addition to the enhanced liquidity risk management requirements of this proposal, the Board intends to implement the second stage of establishing a regulatory liquidity framework for covered companies through one or more future proposals that would require covered companies (or a subset of covered companies) to satisfy specific quantitative liquidity requirements that are derived from, or consistent with, the international liquidity standards incorporated into Basel III. The Board believes that the eventual introduction of the Basel III liquidity standards will be important to establish a rigorous liquidity framework and should further the important goal of buttressing systemically important companies from the possibility of failure due to liquidity shortfalls. These metrics are currently undergoing observation by the BCBS and may be modified depending on the results of that observation. The Board and other federal banking agencies have been working with banking organizations and other members of the BCBS to gather data and study the impact of the proposed standards on the banking system. The Board is carefully considering what changes to the standards it may recommend to the BCBS based on the results of this observation. The Board also is currently considering, along with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, one or more joint rulemakings that would implement the Basel Liquidity Framework in the United States.

Question 10: Is the Board's approach to enhanced liquidity standards for covered companies appropriate? Why or why not?

Question 11: Are there other approaches that would effectively enhance liquidity standards for covered companies? If so, provide detailed examples and explanations.

Question 12: The Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt. Should the Board adopt a short-term debt limit in addition to or in place of the LCR and NSFR? Discuss why or why not?

B. Overview of the Proposed Rule

1. Key Definitions

Under the proposed rule, liquidity is defined as a covered company's capacity to efficiently meet its expected and unexpected cash flows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the covered company. Liquidity risk is defined as the risk that a covered company's financial condition or safety and soundness will be adversely affected by its inability or perceived inability to meet its cash and collateral obligations.

2. Corporate Governance Provisions

A critical element of sound liquidity risk management is effective corporate governance, consisting of oversight of the covered company's liquidity risk management by its board of directors, as well as senior management, and an independent review function. The proposed rule includes provisions addressing these aspects of a covered company's corporate governance with respect liquidity risk management.

a. Board of Directors and Risk Committee Responsibilities (§ 252.52)

A covered company's board of directors is ultimately responsible for the liquidity risk assumed by the covered company. Accordingly, the proposed rule at § 252.52(a) would require that the board of directors (or the risk committee)[62] must oversee the covered company's liquidity risk management processes, and must review and approve the liquidity risk management strategies, policies, and procedures established by senior management.

The proposed rule would impose several specific duties on the board of directors. First, the board of directors would be required to establish the covered company's liquidity risk tolerance at least annually. The proposed rule would define liquidity risk tolerance as the acceptable level of liquidity risk the covered company may assume in connection with its operating strategies. In determining the liquidity risk tolerance, the board of directors would be required to consider the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors. These considerations should help to ensure that the established liquidity risk tolerance will be appropriate for the business strategy of the covered company and its role in the financial system, and will reflect the covered company's financial condition and funding capacity on an ongoing basis.

The liquidity risk tolerance should reflect the board of directors' assessment of tradeoffs between the costs and benefits of liquidity. That is, inadequate liquidity can expose the covered company to significant financial stress and endanger its ability to meet contractual obligations. Conversely, too much liquidity can entail substantial opportunity costs and have a negative impact on the covered company's profitability. In establishing the covered company's liquidity risk tolerance, the Board would expect a covered company's board of directors to articulate the liquidity risk tolerance in such a way that all levels of management clearly would: (i) Understand the board of director's policy for managing the trade-offs between the risk of insufficient liquidity and generating profit; and (ii) properly apply this approach to all aspects of

[62] The risk committee would be defined as the enterprise-wide committee established by a covered company's board of directors under proposed section 252.126 of the risk management rules subpart of this proposal.

liquidity risk management throughout the organization.[63] To ensure that a covered company is managed in accordance with the liquidity risk tolerance, the proposed rule would require the board of directors to review information provided by senior management at least semi-annually to determine whether the covered company is managed in accordance with the established liquidity risk tolerance.

Second, the risk committee or a designated subcommittee of the risk committee would be required to review and approve the liquidity costs, benefits, and risk of each significant new business line and each significant new product before the covered company may implement the line or offer the product. In connection with this review, the risk committee or a designated subcommittee would be required to consider whether the liquidity risk of the new strategy or product under current conditions and under a liquidity stress is within the established liquidity risk tolerance. At least annually, the risk committee or a designated subcommittee would be required to review approved significant business lines and products to determine whether each line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each line or product continues to be within the established liquidity risk tolerance.

Third, the proposed rule would require the board of directors to review and approve the covered company's CFP at least annually and whenever the covered company materially revises the plan. As discussed below, the CFP is the covered company's compilation of policies, procedures, and action plans for managing liquidity stress events.

Fourth, the risk committee or a designated subcommittee would be required to conduct the following reviews and approvals at least quarterly:

(i) A review of cash flow projections produced under section 252.55 of the proposed rule that use time periods in excess of 30 days to ensure that the covered company's liquidity risk is within the covered company's established liquidity risk tolerance;

(ii) A review and approval of the liquidity stress testing described in section 252.56 of the proposed rule, including the covered company's stress testing practices, methodologies, and assumptions. The risk committee or a designated subcommittee would also be required to conduct this review and approval whenever the covered company materially revises its liquidity stress testing;

(iii) A review of the liquidity stress testing results produced under section 252.56 of the proposed rule;

(iv) Approval of the size and composition of the liquidity buffer established under section 252.57 of the proposed rule;

(v) A review and approval of the specific limits on potential sources of liquidity risk established under section 252.59 of the proposed rule, and a review of the covered company's compliance with those limits; and

(iv) A review of liquidity risk management information necessary to identify, measure, monitor, and control liquidity risk and to comply with the new liquidity rules.

In addition, the risk committee or a designated subcommittee would be required to periodically review the independent validation of the stress tests produced under section 252.56(c)(2)(ii) of the proposed rule.

The proposed rule establishes minimum requirements governing the frequency of certain reviews and approvals. It also would require the board of directors (or the risk committee) to conduct more frequent reviews and approvals as market and idiosyncratic conditions warrant.[64] The risk committee or a designated subcommittee would also be required to establish procedures governing the content of senior management reports on the liquidity risk profile of the covered company and other information described in the senior management responsibilities section below.

b. Senior Management Responsibilities (§ 252.53)

Under the proposed rule, senior management of a covered company would be required to establish and implement liquidity risk management strategies, policies and procedures. This would include overseeing the development and implementation of liquidity risk measurement and reporting systems, the cash flow projections, the liquidity stress testing, the liquidity buffer, the CFP, the specific limits, and the monitoring procedures required under the proposed rule.

Senior management would also be required to report regularly to the risk committee or designated subcommittee thereof on the liquidity risk profile of the covered company, and to provide other relevant and necessary information to the board of directors (or risk committee) to facilitate its oversight of the liquidity risk management process. As noted above, the proposed rule would require the risk committee or a designated subcommittee to establish procedures governing the content of management reports on the liquidity risk profile of the covered company and other information regarding compliance with the proposed rule. The Board expects that management would be required under these procedures to report as frequently as conditions warrant, but no less frequently than quarterly.

c. Independent Review (§ 252.54)

Under the proposed rule, a covered company would be required to establish and maintain an independent review function to evaluate its liquidity risk management. Under the proposal, this review function must be independent of management functions that execute funding (the treasury function). The independent review function would be required to review and evaluate the adequacy and effectiveness of the covered company's liquidity risk management processes regularly, but no less frequently than annually. It would also be required to assess whether the covered company's liquidity risk management complies with applicable laws, regulations, supervisory guidance, and sound business practices, and to report statutory and regulatory noncompliance and other material liquidity risk management issues to the board of directors (or the risk committee) in writing for corrective action.

An appropriate internal review conducted by the independent review function should address all relevant elements of a covered company's risk management process, including adherence to its own policies and procedures, and the adequacy of its risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, document, and evaluate the risk management processes, and recommend solutions to any identified weaknesses.

[63] Under the proposed rule, the established liquidity risk tolerance would be considered in assessing new business strategies and products (proposed § 252.52(b)(2)), in setting the size of the liquidity buffer (proposed § 252.57(b)), in developing the CFP (proposed § 252.58(a)), and in setting the specific limits on sources of liquidity (proposed § 252.59(b)).

[64] As used in this preamble, idiosyncratic conditions or events refer to conditions or events that are unique to the covered company. Market conditions or events refer to conditions or events that are market-wide.

3. Liquidity Requirements

a. Cash Flow Projections (§ 252.55)

Comprehensive projections of a covered company's cash flows from the company's various operations are a critical tool for managing liquidity risk. To ensure that a covered company has a sound process for identifying and measuring liquidity risk, the proposed rule would require a covered company to produce comprehensive projections that forecast cash flows arising from assets, liabilities, and off-balance sheet exposures over appropriate time periods, and to identify and quantify discrete and cumulative cash flow mismatches over these time periods. The proposed rule would specifically require the covered company to provide cash flow projections over the short-term and long-term time horizons that are appropriate to the covered company's capital structure, risk profile, complexity, activities, size and other risk-related factors.[65]

To make sure that the cash flow projections will analyze liquidity risk exposure to contingent events, the proposed rule would require that projections must include cash flows arising from contractual maturities, as well as cash flows from new business, funding renewals, customer options, and other potential events that may impact liquidity. Static projections based on the contractual cash flows of assets, liabilities, and off-balance sheet items are helpful in identifying liquidity gaps. However, such static projections may inadequately quantify important aspects of potential liquidity risk because these projections ignore new business, funding renewals, customer options, and other contingent events that have a significant impact on a covered company's liquidity risk profile. A dynamic analysis that incorporates management's reasoned assumptions regarding the future behavior of assets, liabilities, and off-balance sheet items in projected cash flows is far more useful than a static projection in identifying potential liquidity risk exposure.

Under the proposed rule, a covered company would be required to develop cash flow projections that provide sufficient detail to reflect its capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors. Such detail may include projections broken down by business line, legal entity, or jurisdiction, and cash flow projections that use more time periods than the two minimum time periods that would be required under the rule.

The proposed rule states that a covered company must establish a robust methodology for making its cash flow projections,[66] and must use reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in the projections. Given the critical importance that the methodology and underlying assumptions play in liquidity risk measurement, the covered company would also be required to adequately document the methodology and assumptions.[67] In addition, the Board expects senior management to periodically review and approve the assumptions used in the cash flow projections to make sure that they are reasonable and appropriate.

b. Liquidity Stress Testing (§ 252.56)

While financial companies typically manage their liquidity under normal circumstances with regular sources of liquidity readily available, they should also be prepared to manage liquidity under adverse conditions in which liquidity sources may be limited or nonexistent. Insufficient consideration of liquidity management under the conditions that arose during the financial crisis was a major contributor to the severe liquidity problems many financial companies faced at the time. Accordingly, rigorous and regular stress testing and scenario analysis, combined with comprehensive information about an institution's funding position, is an important tool for effective liquidity risk management that should reduce the risk of a firm's failure due to adverse liquidity conditions.

To promote preparedness for adverse liquidity conditions, the proposed rule would require the covered company to regularly stress test its cash flow projections by identifying liquidity stress scenarios and assessing the effects of these scenarios on the covered company's cash flow and liquidity. By considering how adverse events, conditions, and outcomes, including extremes, affect the covered company's exposure to liquidity risk, a covered company can identify vulnerabilities, quantify the depth, source, and degree of potential liquidity strain, and analyze the possible impacts. Under the proposed rule, the covered company would use the results of the stress testing to determine the size of its liquidity buffer, and would incorporate information generated by stress testing in the quantitative component of the CFP.

The proposed rule would require that liquidity stress testing comprehensively address a covered company's activities, exposures, and risks, including off-balance sheet exposures. To satisfy this requirement, stress testing would have to address the covered company's full set of activities, exposures and risks, both on- and off-balance sheet, and address non-contractual sources of risks, such as reputational risks. For example, stress testing should address potential liquidity issues arising from the covered company's use of sponsored vehicles that issue debt instruments periodically to the markets, such as asset-backed commercial paper and similar conduits. Under stress scenarios, the covered company may be contractually required, or compelled in the interest of mitigating reputational risk, to provide liquidity support to such a vehicle.

The proposed rule would require a covered company to conduct the liquidity stress testing at least monthly. In addition to monthly stress testing, a covered company should have the flexibility to conduct ''ad hoc'' stress testing to address rapidly emerging risks or consider the impact of sudden events. Accordingly, the proposed rule specifies that the covered company must have the ability to perform stress testing more frequently than monthly, and the ability to vary underlying assumptions as conditions change. To facilitate effective supervision of the sufficiency of a covered company's liquidity management, under the proposed rule, a covered company may be required by the Federal Reserve to perform additional stress testing as conditions relating to the institution or the markets generally may warrant, or to address other supervisory concerns. The Federal Reserve may, for example, require a covered company to perform additional stress testing where there has been a significant deterioration in the covered company's earnings, asset quality, or overall financial condition; are negative

[65] A covered company would be required to update short-term cash flow projections daily, and update long-term cash flow projections at least monthly.

[66] In its most basic form, a cash-flow-projection may be a worksheet-table with columns denoting the selected time periods or buckets for which cash flows are to be projected. The rows of this table may consist of various types of assets, liabilities, and off-balance sheet items, often grouped by their cash-flow characteristics. Different groupings may be used to achieve different objectives of the cash-flow projection. For each row, net cash flows arising from the particular asset, liability, or off-balance sheet activity may be projected across the time buckets. The detail and granularity of the rows, and thus the projections, should depend on the sophistication and complexity of the institution. Complex companies generally provide more detail, while less complex companies use higher levels of aggregation.

[67] *See* section 252.61 of the proposed rule, which states that a covered company must document all material aspects of its liquidity risk management process and its compliance with the requirements in the rule.

trends or heighten risk associated with a particular product line; or are increased concerns over the covered company's funding of off-balance sheet exposures.

Effective stress testing should include scenario analysis that uses historical and hypothetical scenarios to assess the impact on liquidity of various events and circumstances, including extremes. Effective liquidity stress testing should also employ a range of stress scenarios involving macroeconomic, market-wide, and idiosyncratic events, and consider interactions and feedback effects. Accordingly, the proposed rule states that a covered company's stress testing must incorporate a range of stress scenarios that may significantly affect the covered company's liquidity, taking into consideration its on- and off-balance sheet exposures, business lines, organizational structure, and other characteristics. At a minimum, the proposed rule would require a covered company to incorporate stress scenarios to account for market stress, idiosyncratic stress, and combined market and idiosyncratic stresses. Additional scenarios should be used as needed to ensure that all of the significant aspects of liquidity risks to the covered company have been modeled. The proposed rule would also require that the stress scenarios address the potential impact of market disruptions on the covered company, and the potential actions of market participants experiencing liquidity stresses under the same market disruption.

Under the proposed rule, a covered company's liquidity stress scenarios must be forward-looking and incorporate a range of potential changes to a covered company's exposures, activities, and risks as well as changes to the broader economic and financial environment. To meet this standard, the stress tests would need to be sufficiently dynamic to incorporate changes in the covered company's on- and off-balance sheet activities, portfolio composition, asset quality, operating environment, business strategy, and other risks that may arise over time from idiosyncratic events, macroeconomic and financial market developments, or some combination of thereof. The stress tests should look beyond assumptions based only on historical data, and incorporate new events and challenge conventional assumptions.

Effective liquidity stress testing should be conducted over a variety of different time horizons to adequately capture rapidly developing events, and other conditions and outcomes that may materialize in the near or long term. To make sure that a covered company's stress testing captures such events, condition, and outcomes, the proposed rule would require that the covered company's stress scenarios use a minimum of four time horizons including an overnight, a 30-day, a 90-day, and a one-year time horizon. A covered company may be required to use more time horizons where necessary to reflect the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.

The proposed rule further provides that liquidity stress testing must be tailored to, and provide sufficient detail to reflect a covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. This requirement is intended to ensure that stress testing will be tied directly to the covered company's business profile and the regulatory environment in which the covered company operates,[68] and will address relevant risk areas, provide for the appropriate level of aggregation, and capture all appropriate risk drivers, internal and external influences, and other key considerations that may affect the covered company's liquidity position. This may require analyses by business line, legal entity, or jurisdiction, or stress scenarios that use time horizons in addition to the minimum number described above.

The proposed rule would require a covered company to incorporate certain assumptions designed to ensure that stress testing will provide relevant information to support the establishment of the liquidity buffer (see section 252.56(b)(4) of the proposed rule). As discussed below, the liquidity buffer is composed of highly liquid assets that are unencumbered, and is designed to meet projected net cash outflows and the projected loss or impairment of existing funding sources for 30 days during a range of liquidity stress scenarios. To reflect this design, the proposed rule would require that the covered company must assume that, for the first 30 days of a liquidity stress scenario, only highly liquid assets that are unencumbered may be used as cash flow sources to meet projected funding needs. For time periods beyond the first 30 days of a liquidity stress scenario, highly liquid assets that are unencumbered and other appropriate funding sources may be used.[69]

A covered company's liquidity stress testing should account for deteriorations in asset valuations when there is market stress. Accordingly, the proposed rule would require the covered company to impose a discount to the fair market value of an asset that is used as a cash flow source to offset projected funding needs in order to reflect any credit risk and market volatility of the asset. The proposed rule would also require that sources of funding used to generate cash to offset projected funding needs be sufficiently diversified throughout each stress test time horizon. Thus, if a covered company holds high quality assets other than cash and securities issued by the U.S. government, a U.S. government agency,[70] or a U.S. government-sponsored entity,[71] the assets should be diversified by collateral, counterparty, or borrowing capacity, and other liquidity risk identifiers.

The proposed rule would impose various process and system requirements for stress testing. Specifically, a covered company would be required to establish and maintain policies and procedures that outline its liquidity stress testing practices, methodologies, and assumptions; detail the use of each stress test employed; and provide for the enhancement of stress testing as risks change and techniques evolve. The proposed rule also states that a covered company must have an effective system of control and oversight over the stress test function to ensure that each stress test is designed in accordance with the rule, and the stress process and assumptions are validated. The validation function must be independent of functions that develop or design the liquidity stress testing, and independent of management functions that execute funding (e.g., the treasury function).

In addition, the proposed rule would require a covered company to rely on reasonably high-quality data and information to produce creditable

[68] For example, applicable statutory and regulatory restrictions on covered companies, including restrictions on the transferability of assets between legal entities, would need to be incorporated. For bank holding companies these restrictions include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and Regulation W (12 CFR part 223), which govern covered transactions between banks and their affiliates.

[69] The liquidity buffer is discussed more fully below, as are the definitions of ''unencumbered'' and ''highly liquid asset.''

[70] A U.S. government agency is defined in the proposed rule as an agency or instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

[71] A U.S. government-sponsored entity is defined in the proposed rule as an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

outcomes. Specifically, the proposed rule would require that the covered company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

Question 13: What challenges will covered companies face in formulating and implementing liquidity stress testing described in the proposed rule? What changes, if any, should be made to the proposed liquidity stress testing requirements (including the stress scenario requirements and required assumptions) to ensure that analyses of the stress testing will provide useful information for the management of a covered company's liquidity risk? What alternatives to the proposed liquidity stress testing requirements, including the stress scenario requirements and required assumptions, should the Board consider? What additional parameters for the liquidity stress tests should the Board consider defining?

c. Liquidity Buffer (§ 252.57)

To withstand liquidity stress under adverse conditions, a company generally needs a sufficient supply of liquid assets that can be sold or pledged to obtain funds. During the financial crisis, financial companies that experienced severe liquidity difficulties often held insufficient liquid assets to meet their liquidity needs as market sources of funding were severely curtailed. The BCBS's LCR standard was developed to promote short-term resilience of a bank's liquidity risk profile by ensuring that it has sufficient high-quality liquid assets to survive an adverse stress scenario lasting for one month, providing time for appropriate corrective actions to be taken by management or supervisors, or to allow the institution to be resolved in an orderly way.[72]

Consistent with the effort towards developing a comprehensive liquidity framework that would eventually incorporate the LCR standard, the proposed rule, in addition to requiring stress tests as described above, would require a covered company to continuously maintain a liquidity buffer of unencumbered highly liquid assets sufficient to meet projected net cash outflows and the projected loss or impairment of existing funding sources for 30 days over a range of liquidity stress scenarios.

In addition to using the results of the liquidity stress testing to size a covered company's liquidity buffer, the proposed rule would require that the liquidity buffer would also be aligned to reflect the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors, as well as the covered company's established liquidity risk tolerance. These factors, however, could not justify reducing the buffer to a point where it would be insufficient to meet projected net cash outflows and the projected impairment of existing funding sources for 30 days under the range of liquidity stress scenarios incorporated into its stress testing. As explained above, under the proposal, the risk committee or a designated subcommittee of the risk committee would be required to approve the size and composition of the liquidity buffer at least quarterly.

The proposed rule limits the type of assets that may be included in the buffer to highly liquid assets that are unencumbered. The definition of highly liquid assets would ensure that the assets in the liquidity buffer can easily and immediately be converted to cash with little or no loss of value. Thus, cash or securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored entity are included in the proposed definition of highly liquid assets. In addition, the proposed rule includes criteria that may be used to identify other assets that could be included in the buffer as highly liquid assets. Specifically, the proposed definition of highly liquid assets includes any other asset that a covered company demonstrates to the satisfaction of the Federal Reserve:

(i) Has low credit risk (low risk of default) and low market risk (little or no price volatility);[73]

(ii) Is traded in an active secondary two-way market[74] that has observable market prices, committed market makers, a large number of market participants, and a high trading volume; and

(iii) Is a type of asset that investors historically have purchased in periods of financial market distress during which liquidity is impaired (flight to quality). For example, certain ''plain vanilla'' corporate bonds (that is, bonds that are neither structured products nor subordinated debt) issued by a non-financial company with a strong financial profile have been reliable sources of liquidity in the repurchase and sale market during past stressed conditions. Assets with the above characteristics could, as proposed, meet the definition of a highly liquid asset.

The highly liquid assets in the liquidity buffer should be readily available at all times to meet a covered company's liquidity needs. Accordingly, the assets must be unencumbered. Under the proposed rule, unencumbered would be defined to mean, with respect to an asset, that: (i) The asset is not pledged, does not secure, collateralize or provide credit enhancement to any transaction, and is not subject to any lien; (ii) the asset is not designated as a hedge on a trading position;[75] and (iii) there are no legal or contractual restrictions on the ability of the covered company to promptly liquidate, sell, transfer, or assign the asset.

Generally, an asset would be designated as a hedge on a trading position if the asset is held by a covered company directly to offset the market risk of another trading asset or group of trading assets held by the covered company. For example, if a covered company holds a position in a corporate bond index in its trading account, corporate bonds that hedge that index position may not be included in the liquidity buffer.

To account for deteriorations in asset valuations when there is market stress, the proposed rule also would require a covered company to impose a discount to the fair market value of an asset included in the liquidity buffer to reflect the credit risk and market volatility of the asset. In addition, to ensure that the liquidity buffer is not concentrated in a particular type of highly liquid assets, the proposed rule requires that the pool of assets included in the liquidity buffer must be sufficiently diversified, as discussed above. Thus, these highly liquid assets should be diversified by instrument type, counterparties, geographic market, and other liquidity risk identifiers.

[72] *See* Basel III liquidity framework at paragraphs 4 and 15.

[73] Generally, market risk is the risk of loss that could result from broad market movements, such as changes in the general level of interest rates, credit spreads, equity prices, foreign exchange rates, or commodity prices.

[74] A two-way market would be defined as a market with independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming to trade custom. This definition is consistent with the definition of ''two-way market'' contained in the interagency proposed rule on *Risk-Based Capital Guidelines; Market Risk,* 76 FR 1890 (January 11, 2011) (Market Risk NPR).

[75] A trading position would be defined as a position that is held by a covered company for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock-in arbitrage profits. This definition is based on the definition of trading position in the Market Risk NPR.

Question 14: The Board requests comment on all aspects of the proposed definitions of ''highly liquid assets'' and ''unencumbered.'' What, if any, other assets should be specifically listed in the definition of highly liquid assets? Why should these other assets be included (that is, describe how the asset is easily and immediately convertible into cash with little or no loss in value during liquidity stress events)? Are the criteria for identifying additional assets for inclusion in the definition of highly liquid assets appropriate? If not, how and why should the Board revise the criteria?

Question 15: What changes, if any, should the Board make to the proposed definition of unencumbered to make sure that assets in the buffer will be readily available at all times to meet a covered company's liquidity needs? The rule would require a covered company to discount the fair market value of assets that are included in the liquidity buffer. Please describe the process that covered company will use to determine the amount of the discount.

d. Contingency Funding Plan (§ 252.58)

The proposed rule would require a covered company to establish and maintain a CFP. A CFP is a compilation of policies, procedures, and action plans for managing liquidity stress events. The objectives of the CFP are to provide a plan for responding to a liquidity crisis, to identify alternate liquidity sources that a covered company can access during liquidity stress events, and to describe steps that should be taken to ensure that the covered company's sources of liquidity are sufficient to fund its operating costs and meet its commitments while minimizing additional costs and disruption.

The proposed rule states that a covered company must establish and maintain a CFP that sets out the covered company's strategies for addressing liquidity needs during liquidity stress events. Under the proposed rule, the CFP would be required to be commensurate with the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors, and established liquidity risk tolerance. A covered company would be required to update the CFP at least annually or whenever changes to market and idiosyncratic conditions warrant an update.

Under the proposed rule, the CFP includes four components: a quantitative assessment, an event management process, monitoring requirements, and testing requirements. These components are discussed in detail below.

a. Quantitative Assessment

The first component of the CFP is the quantitative assessment of liquidity needs and funding sources. A covered company would be required to incorporate information generated by liquidity stress testing into this component of the CFP. The proposed rule would provide that the stress tests are used to: (i) Identify liquidity stress events that have a significant impact on the covered company's liquidity; (ii) assess the level and nature of impact on the covered company's liquidity that may occur during identified liquidity events; (iii) assess available funding sources and needs during the identified liquidity stress events; and (iv) identify alternative funding sources that may be used during the liquidity stress events.

i. *Identification of stress events.* A covered company would be required to identify stress events that have a significant impact on the covered company's liquidity. Possible stress events may include deterioration in asset quality, ratings downgrades, widening of credit default swap spreads, operating losses, declining financial institution equity prices, negative press coverage, or other events that call into question the covered company's ability to meet its obligations.

ii. *Assessing the level and nature of impact.* Once the liquidity stress events are identified, a covered company's CFP would incorporate an assessment of the level and nature of impact on the covered company's liquidity that may occur during the identified liquidity stress event. The CFP would delineate the various levels of stress severity that can occur during the stress event, and identify the various stages for each type of event. The events, stages, and severity levels should include temporary disruptions, as well as those that might be intermediate or longer term. The covered company may use the different levels of severity to design early warning indicators, to assess potential funding needs at various points in a developing crisis, and to specify comprehensive action plans.

iii. *Assessing available funding sources and needs.* To meet the requirement of the proposal, the CFP must assess available funding sources and needs during identified liquidity stress events. This would require an analysis of the potential erosion of available funding at alternative stages or severity levels of each stress event, as well as the identification of potential cash flow mismatches that may occur during the various stress levels. A covered company is expected to base its analysis on realistic assessments of the behavior of funds providers during the event, and should incorporate alternative funding sources. The analysis should include all material on- and off-balance sheet cash flows and their related effects. The result should be a realistic analysis of the covered company's cash inflows, outflows, and funds availability at different time intervals during the identified liquidity stress event, which should permit the covered company to measure its ability to fund operations.

iv. *Identifying alternative funding sources.* Liquidity pressures are likely to spread from one funding source to another during significant liquidity stress events. Accordingly, the proposed rule would require a covered company to identify alternative funding sources that may be accessed during identified liquidity stress events. Since some of these alternative funding sources will rarely be used in the normal course of business, a covered company should conduct advance planning and periodic testing (see discussion below) to make sure that the funding sources are available when needed. Administrative procedures and agreements are expected to also be in place before the covered company needs to access the alternative funding sources.

Discount window credit may be incorporated into CFPs as a potential source of funds in a manner consistent with the terms provided by the Federal Reserve Banks. For example, primary credit is currently available on a collateralized basis for financially sound depository institutions as a backup source of funds for short-term funding needs. CFPs that incorporate borrowing from the discount window should specify the actions that the covered company will take to replace discount window borrowing with more permanent funding, including the proposed time frame for these actions.

b. Event Management Process

Under the proposed rule, the CFP must also include an event management process that sets out its procedures for managing liquidity during identified liquidity stress events. This process must include an action plan that clearly describes the strategies the covered company would use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the covered company would use to access the alternative funding sources identified in the quantitative assessment.

Under the proposed rule, the event management process must also identify

a liquidity stress event management team and specify the process, responsibilities, and triggers for invoking the CFP, escalating the responses described in the action plan, decision-making during the identified liquidity stress events, and executing contingency measures identified in the action plan.

In addition, to promote the flow of necessary information during a liquidity stress, the proposed rule would require the event management process to include a mechanism that ensures effective reporting and communication within the covered company and with outside parties, including the Federal Reserve and other relevant supervisors, counterparties, and other stakeholders.

c. Monitoring

The proposal would also impose monitoring requirements on covered companies so that they are able to proactively position themselves into progressive states of readiness as liquidity stress events evolve. Specifically, the proposed rule would require the CFP to include procedures for monitoring emerging liquidity stress events, and for identifying early warning indicators of emerging liquidity stress events that are tailored to a covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. Such early warning indicators may include, but are not limited to, negative publicity concerning an asset class owned by covered company, potential deterioration in the covered company's financial condition, widening debt or credit default swap spreads, and increased concerns over the funding of off-balance-sheet items.

d. Testing

The proposed rule would require a covered company to periodically test the components of the CFP to assess its reliability during liquidity stress events. Such testing would include trial runs of the operational elements of the CFP to ensure that they work as intended during a liquidity stress event. These tests would include operational simulations to test communications, coordination, and decision making involving relevant managers, including managers at relevant legal entities within the corporate structure.

A covered company would also be required to periodically test the methods it will use to access alternate funding to determine whether these sources of funding will be readily available when needed. For example, the Board expects that a covered company would test the operational elements of a CFP that are associated with lines of credit, the Federal Reserve discount window, or other secured borrowings, since efficient collateral processing during a liquidity stress event is especially important for such funding sources.

Question 16: Are the proposed CFP requirements appropriate for all covered companies? What alternative approaches to the CFP requirements outlined above should the Board consider? If not, how should the Board amend the requirements to make them appropriate for any covered company? Are there additional modifications the Board should make to the proposed rule to enhance the ability of a covered company to comply with the CFP and establish a viable and effective plan for the management of liquidity stress events?

e. Specific Limits (§ 252.59)

To enhance management of liquidity risk, the proposed rule would require a covered company to establish and maintain limits on potential sources of liquidity risk, including three specified sources of liquidity risk. The size of each limit must reflect the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors, and established liquidity risk tolerance. The covered company would be required to establish limits on:

(i) Concentrations of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers.

(ii) The amount of specified liabilities that mature within various time horizons.

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events. Such exposures may be contractual or non-contractual exposures, and include such liabilities as unfunded loan commitments, lines of credit supporting asset sales or securitizations, collateral requirements for derivative transactions, and a letter of credit supporting a variable demand note.

Question 17: Should covered companies be required to establish and maintain limits on other potential sources of liquidity risk in addition to the three specific sources listed in the proposed rule? If so, identify these additional sources of liquidity risk.

f. Monitoring (§ 252.60)

The proposed rule would require a covered company to monitor liquidity risk related to collateral positions, liquidity risks across the enterprise, and intraday liquidity positions. In addition, the covered company would be required to monitor compliance with the specific limits established under § 252.59.

a. Collateral Positions

Under the proposed rule, a covered company would be required to establish and maintain procedures for monitoring assets it has pledged as collateral for an obligation or position, and assets that are available to be pledged. The procedures must address the covered company's ability to:

(i) Calculate all of the covered company's collateral positions in a timely manner, including the value of assets pledged relative to the amount of security required under the contract governing the obligation for which the collateral was pledged, and the unencumbered assets available to be pledged;

(ii) Monitor the levels of available collateral by legal entity, jurisdiction, and currency exposure;

(iii) Monitor shifts between intraday, overnight, and term pledging of collateral; and

(iv) Track operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

b. Legal Entities, Currencies, and Business Lines

Regardless of its organizational structure, it is critical that a covered company actively monitor and control liquidity risks at the level of individual legal entities and the group as a whole. This requires processes that aggregate data across multiple systems to develop an enterprise-wide view of liquidity risk exposure and identify constraints on the transferability of liquidity within the organization.

To promote effective monitoring across the enterprise, the proposed rule would require a covered company to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines. In addition, the proposed rule would require the covered company to maintain sufficient liquidity with respect to each significant legal entity in light of legal and regulatory restrictions on the transfer of liquidity between legal entities.[76] The covered company should

[76] For example, for bank holding companies such restrictions include sections 23A and 23B of the

Continued

ensure that legal distinctions and possible obstacles to cash movements between specific legal entities or between separately regulated entities are recognized. The Board expects a covered company to maintain sufficient liquidity to ensure such compliance in normal times and during liquidity stress events.

c. Intraday Liquidity Positions

Intraday liquidity monitoring is an important component of the liquidity risk management process for a covered company engaged in significant payment, settlement, and clearing activities. Given the interdependencies that exist among payment systems, large complex organizations' inabilities to meet critical payments have the potential to lead to systemic disruptions that can prevent the smooth functioning of payments systems and money markets.

The proposed rule would require a covered company to establish and maintain procedures for monitoring their intraday liquidity risk exposure. These procedures would address how the covered company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Manage and transfer collateral when necessary to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the covered company can meet these obligations as expected;

(iv) Settle less critical obligations as soon as possible;

(v) Control the issuance of credit to customers where necessary; and

(vi) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing its overall liquidity needs.

The monitoring of intraday cash flows generally is an operational risk management function. To ensure that liquidity risk is also appropriately monitored, the Board expects a covered company to provide for integrated oversight of intraday exposures within the operational risk and liquidity risk functions. The Board also expects the procedures for monitoring and managing intraday liquidity positions to reflect in stringency and complexity, and scope of operations of the covered company.

d. Specific Limits

The proposed rule would require a covered company to monitor compliance with the specific limits on potential sources of liquidity risk established under § 252.59.

Question 18: Should the Board require a covered company to monitor other areas of liquidity risk in addition to collateral positions, risk across entities, currencies, and business lines, and intraday liquidity positions? If so, what areas should be added to the list and why?

g. Documentation (§ 252.61)

Comprehensive documentation is necessary to achieve good liquidity risk management and to support the supervisory process. The proposed rule would require a covered company to adequately document all material aspects of its liquidity risk management processes and its compliance with the requirements of the proposed rule, and submit such documentation to the risk committee. Material aspects of its liquidity risk management process would include, but would not be limited to, the methodologies and material assumptions used in cash flow projections and the liquidity stress testing, and all elements of the comprehensive CFP. The covered company must make this documentation available to the Federal Reserve upon request.

Question 19: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation challenges and why? What alternative approaches to liquidity risk management should the Board consider? Are the liquidity management requirements of this proposal too specific or too narrowly defined? If, so explain how. Responses should be detailed as to the nature and impact of these challenges and should address whether the Board should consider implementing transitional arrangements in the rule to address these challenges.

V. Single-Counterparty Exposure Limits

A. Background

During the recent financial crisis, some of the largest financial firms in the world collapsed or nearly did so, demonstrating the risk that the failure of large financial companies poses to the financial stability of the United States and the global financial system. The effect of one large financial institution's failure or near collapse was amplified by the interconnectedness of large, systemically important firms–the degree to which they extended each other credit and served as over-the-counter derivative counterparties to each other. Counterparties of a failing firm were placed under severe strain when the failing firm could not meet its financial obligations resulting in the counterparties' inability to meet their own obligations.

The financial crisis also revealed inadequacies in the U.S. supervisory approach to single-counter party credit concentration limits, which failed to limit the interconnectedness among and concentration of similar risks within large financial companies that contributed to a rapid escalation of the crisis. While banks were subject to single-borrower lending and investment limits, these limits were applied at the bank level, rather than holding company level, and excluded credit exposures generated by derivatives and some securities financing transactions.[77]

In an effort to address single-counterparty concentration risk among large financial companies, section 165(e) of the Dodd-Frank Act directs the Board to establish single-counterparty credit concentration limits for covered companies in order to limit the risks that the failure of any individual firm could pose to a covered company.[78] This section directs the Board to prescribe regulations that prohibit covered companies from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus of the covered company.[79] This section also authorizes the Board to lower the 25 percent threshold if necessary to mitigate the risks to the financial stability of the United States.[80]

Credit exposure to a company is defined in section 165(e) of the Dodd-Frank Act to mean all extensions of credit to the company, including loans, deposits, and lines of credit; all repurchase agreements, reverse repurchase agreements, securities borrowing and lending transactions with the company (to the extent that such transactions create credit exposure for the covered company); all guarantees, acceptances, or letters of

Federal Reserve Act (12 U.S.C. 371c and 371c–1) and Regulation W (12 CFR part 223), which govern covered transactions between banks and their affiliates.

[77] Section 610 of the Dodd-Frank Act amends the term ''loans and extensions of credit'' for purposes of the lending limits applicable to national banks to include any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. *See* Dodd-Frank Act, Public Law 111–203, § 610, 124 Stat. 1376, 1611 (2010). As discussed in more detail below, these types of transactions are also all made subject to the single counterparty credit limits of section 165(e). 12 U.S.C. 5365(e)(3).

[78] *See* 12 U.S.C. 5365(e)(1).

[79] 12 U.S.C. 5365(e)(2).

[80] *See id.*

credit (including endorsement or standby letters of credit) issued on behalf of the company; all purchases of or investments in securities issued by the company; counterparty credit exposure to the company in connection with a derivative transaction between the covered company and the company; and any other similar transaction that the Board, by regulation, determines to be a credit exposure for purposes of section 165.[81]

Section 165(e) also grants authority to the Board (i) to issue such regulations and orders, including definitions consistent with section 165(e), as may be necessary to administer and carry out that section; and (ii) to exempt transactions, in whole or in part, from the definition of the term ''credit exposure,'' if the Board finds that the exemption is in the public interest and consistent with the purposes of section 165(e).[82] Section 165(e) states that its provisions and any implementing regulations and orders of the Board will not be effective until 3 years after the date of enactment of the Dodd-Frank Act, and the Board is authorized to extend the transition period for up to an additional 2 years.[83]

The concept of single-counterparty credit limits for covered companies is similar to, but also broader than, existing limits that operate at the depository institution level of banking organizations, including the investment securities limits and the lending limits imposed on depository institutions.[84] A depository institution generally is limited, subject to certain exceptions, in the total amount of investment securities of any one obligor that it may purchase for its own account to no more than 10 percent of its capital stock and surplus.[85] In addition, a depository institution's total outstanding loans and extensions of credit to one borrower may not exceed 15 percent of the bank's capital stock and surplus, plus an additional 10 percent of the bank's capital and surplus, if the amount that exceeds the bank's 15 percent general limit is fully secured by readily marketable collateral.[86]

Section 165(e) is a separate and independent limit from the investment securities limits and lending limits in the National Bank Act, and a covered company must comply with all of the limits that are applicable to it and its subsidiaries. The Board believes that a covered company should be able to comply with section 165(e) and the proposed rule implementing it on a consolidated basis, in addition to complying, as appropriate, with the investment securities limits and lending limits applicable to a bank subsidiary.

Question 20: How would the limits of section 165(e) and the proposed rule interact with the other existing limits such as the investment and lending limits applicable to banks and what other conflicts might arise in complying with these different regimes?

The financial crisis also revealed weaknesses in the large exposure limits in place in other major financial markets. These limits also failed to restrict interconnectedness among large global financial companies. In response, the BCBS has established a working group to examine challenges posed by weaknesses and inconsistencies in large exposure limit regimes across jurisdictions and to carefully evaluate the merits of reaching an international agreement on large exposure limits. If an international agreement on large exposure limits for banking firms is reached, the Board may amend this proposed rule, as necessary, to achieve consistency with the international approach.

B. Overview of the Proposed Rule

The Board's proposal to implement section 165(e) introduces a two-tier single-counterparty credit limit, with a more stringent single-counterparty credit limit applied to the largest covered companies. The proposed rule includes limits on the exposures of the covered company as well as its subsidiaries—i.e., any company the parent company directly or indirectly controls. ''Control'', for purposes of this proposed rule, would exist when a covered company directly or indirectly owns or controls 25 percent or more of a class of a company's voting securities or 25 percent or more of a company's total equity, or consolidates the company for financial reporting purposes. The proposal would establish a general limit that prohibits a covered company from having aggregate net credit exposure to any single unaffiliated counterparty in excess of *25 percent* of the covered company's capital stock and surplus.[87] In addition, the proposed rule would establish a more stringent net credit exposure limit between a major covered company and any major counterparty, i.e., a major covered company's aggregate net credit exposure to any major counterparty would be limited to *10 percent* of the capital stock and surplus of the major covered company.[88] The proposal would define a ''major covered company'' as any nonbank covered company or any bank holding company with total consolidated assets of $500 billion or more.[89] A ''major counterparty'' would be defined as any major covered company, as well as any foreign banking organization that is or is treated as a bank holding company and that has total consolidated assets of $500 billion or more.[90]

The proposed definition of a counterparty would include a natural person (including the person's immediate family), a company (including its subsidiaries); the United States (including all of its agencies and instrumentalities, but not including any State or political subdivision of a State); a State (including all of its agencies, instrumentalities, and political subdivisions); and a foreign sovereign entity (including its agencies, instrumentalities, political subdivisions). Under the proposal, credit exposures to sovereign entities are made subject to the credit exposure limits (unless specifically exempted) in the same manner as credit exposures to companies. As explained further below, the Board proposes to include sovereign entities in the definition of counterparty because the Board believes that credit exposures of a covered company to such governmental entities create risks to the covered company similar to those created by large exposures to other types of entities, e.g., privately owned companies.

Both the general and more stringent credit limits would be measured in terms of a covered company's capital stock and surplus. The proposed rule would define ''capital stock and surplus'' of a covered company as its total regulatory capital plus excess loan loss reserves. Under the proposed rule, the single-counterparty credit limit

[81] *See* 12 U.S.C. 5365(e)(3).

[82] *See* 12 U.S.C. 5365(e)(5)–(6).

[83] *See* 12 U.S.C. 5365(e)(7).

[84] *See, e.g.,* 12 U.S.C. 24(7); 12 U.S.C. 84; 12 CFR parts 1 and 32; *see also* 12 U.S.C. 335 (applying the provisions of 12 U.S.C. 24(7) to state member banks).

[85] *See* 12 U.S.C. 24(7); 12 CFR part 1.

[86] *See* 12 U.S.C. 84(a); 12 CFR part 32.

[87] *See* proposed rule § 252.93(a). This general limit in the proposed rule follows the 25 percent limit contained in section 165(e) of the Dodd-Frank Act. *See* 12 U.S.C. 5365(e)(2). Section 165(e) of the Dodd-Frank Act limits credit exposure of a covered company to any unaffiliated company. 12 U.S.C. 5365(e)(2). The proposed rule implements the statute by limiting the credit exposure of a covered company to an unaffiliated ''counterparty'' as defined in the proposed rule and as discussed further below. *See* proposed rule § 252.92(k) (defining ''counterparty'').

[88] *See* proposed rule § 252.93(b). Section 165(e)(2) grants the Board authority to lower the limit on net credit exposure below 25 percent if necessary to mitigate risks to the financial stability of the United States. *See* 12 U.S.C. 5365(e)(2).

[89] *See* proposed rule § 252.92(aa) (defining ''major covered company'').

[90] *See* proposed rule § 252.92(z).

would apply to a broad range of transactions with a counterparty, such as extensions of credit (including loans, deposits, and lines of credit), securities lending or securities borrowing transactions, as well as credit derivative or equity derivative transactions in which the covered company has sold protection to a third party referencing the counterparty. The proposed rule also would allow the Board to determine that any similar transaction should be a ''credit transaction''.

The proposal also specifies how the gross credit exposure on a credit transaction should be calculated for each type of credit transaction defined in the proposed rule. For example, the proposed rule would require that the gross credit exposure of a securities borrowing transaction be valued at the amount of cash collateral plus the market value of securities collateral transferred by the covered company to the counterparty.

The general limit (*25 percent* of capital stock and surplus) and the more stringent limit between major covered companies and major counterparties (*10 percent* of capital stock and surplus) apply to the aggregate net credit exposure between the covered company and the counterparty, or between major covered companies and major counterparties. The rule would specify how gross credit exposure amounts are converted to net credit exposure amounts by taking into account eligible collateral, eligible guarantees, eligible credit and equity derivative hedges, other eligible hedges (i.e., a short position in the counterparty's debt or equity security), and for securities financing transaction, the effect of bilateral netting agreements. Under the proposed rule, ''eligible collateral'' is generally defined to include cash on deposit with a covered company (including cash held for the covered company by a third-party custodian or trustee); debt securities (other than mortgage- or asset-backed securities) that are bank-eligible investments; equity securities that are publicly traded; or convertible bonds that are publicly traded.

An ''eligible guarantee'' is a guarantee that meets certain criteria described in the proposed rule, including being written by an eligible protection provider. Similarly, eligible credit or equity derivative hedges would also be required to be written by an eligible protection provider and meet certain other criteria. For example, an eligible credit derivative hedge would have to be in simple form, including single-name or standard, non-tranched index credit derivatives. Moreover, an eligible equity derivative hedge would only include an equity-linked total return swap and would not include other, more complex equity derivatives, e.g., purchased equity-linked options.

Section-by-Section Analysis

a. Section 252.91: Applicability

Section 252.91 states that, in general, the proposed rule would apply to a company on the first day of the fifth quarter following the date on which it became a covered company. Initially, the proposed rule would not apply to any covered company until October 1, 2013.[91]

Question 21: Should the Board consider a longer phase-in for all or a subset of covered companies?

b. Section 252.92: Definitions

Section 252.92 of the proposed rule defines the key terms used in the rule. As discussed above, the limits of the proposed rule apply to credit exposure of a covered company, including its subsidiaries to any unaffiliated counterparty. A ''subsidiary'' of a specified company means a company that is directly or indirectly *controlled* by the specified company.[92] A company would control another company if it (i) Owns or controls with the power to vote 25 percent or more of a class of voting securities of the company; (ii) owns or controls 25 percent or more of the total equity of the company; or (iii) consolidates the company for financial reporting purposes.[93] The proposed rule's definition of control would differ from that in the Bank Holding Company Act and the Board's Regulation Y.[94] The Board proposes to vary from the Bank Holding Company Act/Regulation Y definition of control for purposes of this proposed regulation because a simpler, more objective definition of control is more consistent with the objectives of single-counterparty credit limits.

Question 22: Is the approach of including all subsidiaries of a covered company in the definition of covered company for purposes of the proposed rule appropriate?[95] If not, explain why not.

Question 23: Should the Bank Holding Company Act/Regulation Y definition of ''control'' be adopted for purposes of the proposed rule? Are there alternative approaches to defining when a company is a subsidiary of another the Board should consider?

Under the proposed rule, a fund or vehicle that is sponsored or advised by a covered company would not be considered a subsidiary of the covered company unless it was ''controlled'' by that covered company. A covered company would not control a fund or vehicle that is sponsored or advised by the covered company if (i) it did not own or control more than 25 percent of the voting securities or total equity of the fund or vehicle; and (ii) the fund or vehicle would not be consolidated with the covered company for financial reporting purposes.[96] If a fund or vehicle is not controlled by a covered company, the exposures of such fund or vehicle to its counterparties would not be aggregated with those of the covered company.[97] Such arm's length treatment, however, may be at odds with the support that some companies provided during the financial crisis to the funds they advised and sponsored. For example, many money market mutual fund (MMMF) sponsors, including banking organizations, supported their MMMFs during the crisis in order to enable those funds to meet investor redemption requests without having to sell assets into then-fragile and illiquid markets.

Question 24: Since a covered company may have strong incentives to provide support in times of distress to MMMFs and certain other funds or vehicles that it sponsors or advises, the Board seeks comment on whether such funds or vehicles should be included as part of the covered company for purposes of this rule.[98] Is the proposed

[91] *See* proposed rule § 252.91(a)(2); *see also* 12 U.S.C. 5365(e)(7)(A) (stating that regulations and orders under section 165(e) shall not be effective until 3 years after the date of enactment of the Dodd-Frank Act).

[92] *See* proposed rule § 252.92(jj).

[93] *See* proposed rule § 252.92(i). This definition of control is similar to that in Appendix G of Regulation Y which states that a person or company controls a company if it (i) owns, controls, or holds with the power to vote 25 percent or more of a class of voting securities of the company; or (ii) consolidates the company for financial reporting purposes. *See* 12 CFR 225, App. G. The only difference between the definition from Appendix G and the proposed rule's definition of control is the addition of the prong to capture total equity in the proposed rule.

[94] *See* 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e)(1).

[95] As described below, the same approach to subsidiaries is used for counterparties that are companies. Such counterparties are defined to include a company and its subsidiaries, thus requiring aggregation of the entire organization's credit exposures to the covered company it faces.

[96] Financial Accounting Standards Board, ASC Section 810, *Consolidation.* Further, these requirements are currently under review. The Board may review the effect any change made to these consolidation requirements has on whether a covered company is required to consolidate such fund or vehicle for financial reporting purposes and amend this rule, as necessary.

[97] Instead, a non-controlled fund or vehicle would be treated as a counterparty of the covered company and any exposure or transaction between those entities would be subject to the limits of the proposed rule.

[98] The same issued is raised with respect to the treatment of funds sponsored and advised by

rule's definition of ''control'' effective, and should the proposal's definition of ''subsidiary'' be expanded to include any investment fund or vehicle advised or sponsored by a covered company or any other entity?

The proposed rule would establish limits on the credit exposure of a covered company to a single ''counterparty''.[99] ''Counterparty'' would be defined to mean (i) With respect to a natural person, the person and members of the person's immediate family, collectively;[100] (ii) with respect to a company, the company and all of its subsidiaries, collectively; (iii) with respect to the United States, the United States and all of its agencies and instrumentalities (but not including any State or political subdivision of a State), collectively; (iv) with respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including municipalities), collectively; and (v) with respect to a foreign sovereign entity, the foreign sovereign entity and all of its agencies, instrumentalities, and political subdivisions, collectively.[101]

Section 165(e) directs the Board to limit credit exposure of a covered company to ''*any unaffiliated company*''.[102] The Board included sovereign entities in the definition of counterparty to limit the vulnerability of a covered company to default by a single sovereign state, because the Board believes that credit exposures of a covered company to such governmental entities create risks to the covered company that are similar to those created by large exposures to other types of entities. The severe distress or failure of a sovereign entity could have effects on a covered company that are comparable to those caused by the failure of a financial firm or nonfinancial corporation to which the covered company has a large credit exposure. For these reasons, credit exposures to sovereign governments are made subject to the credit exposure limits in the same manner as credit exposures to companies. The Board believes that the authority in the Dodd-Frank Act and the Board's general safety and soundness authority in associated banking laws are sufficient to encompass sovereign governments in the definition of counterparty in this manner.[103]

As discussed below, certain credit exposures of a covered company to the U.S. government are exempt from the credit exposure limits.[104] There is no similar exemption, however, for exposures to U.S. state or local governments or foreign sovereigns. Accordingly, credit exposures to U.S. state and local governments and foreign sovereigns would be subject to the proposed limits.

Question 25: Should the definition of ''counterparty'' differentiate between types of exposures to a foreign sovereign entity including exposures to local governments? Should exposures to a company controlled by a foreign sovereign entity be included in the exposure to that foreign sovereign entity?

Question 26: Should certain credit exposures to foreign sovereign entities be exempted from the limitations of the proposed rule—for example, exposures to foreign central banks necessary to facilitate the operation of a foreign banking business by a covered company?

The Board also notes that difficult issues are raised in connection with the valuation of credit exposure arising from direct investments in or indirect exposures to a collateralized debt obligation (CDO) or other obligation issued by a special purpose vehicle (SPV). The failure to look through an SPV to its sponsor or to the issuer of the underlying assets may serve at times to improperly mask a covered company's exposure to those parties. Accordingly, under the proposed reservation of authority, the Board may look through some SPVs either to the issuer of the underlying assets in the vehicle or to the sponsor. In the alternative, the Board may require covered companies to look through to the underlying assets of an SPV but only if the SPV failed certain discrete concentration tests (such as having more than 20 underlying exposures).

Question 27: How should exposures to SPVs and their underlying assets and sponsors be treated? What other alternatives should the Board consider?

The credit exposure of a covered company to an unaffiliated counterparty is limited to a percentage of the capital stock and surplus of the covered company.[105] Under the proposed rule, ''capital stock and surplus'' of a bank holding company is the sum of the company's total regulatory capital as calculated under the risk-based capital adequacy guidelines applicable to that bank holding company under Regulation Y (12 CFR part 225) and the balance of the allowance for loan and lease losses of the bank holding company not included in tier 2 capital under the capital adequacy guidelines applicable to that bank holding company under Regulation Y (12 CFR part 225).[106] This definition of capital stock and surplus is generally consistent with the definition of the same term in the Board's Regulations O and W and the OCC's national bank lending limit regulation.[107] For a nonbank covered company, ''capital stock and surplus'' includes the total regulatory capital of such company on a consolidated basis, as determined under the risk-based capital rules the company is subject to by rule or order of the Board.[108]

An alternative measure of ''capital stock and surplus'' might focus on common equity and, in that respect, be consistent with the post-crisis global regulatory move toward tier 1 common equity as the primary measure of loss absorbing capital for internationally active banking firms. For example, Basel III introduces for the first time a specific tier 1 common equity requirement and uses tier 1 common equity measures in its capital conservation buffer and

counterparties. Such funds or vehicles similarly would not be considered to be part of the counterparty under the proposed rule's definition of control.

[99] *See* proposed rule § 252.93.

[100] ''Immediate family'' is defined in section 252.92(y) of the proposed rule.

[101] *See* proposed rule § 252.92(k); *see also* proposed rule § 252.92(hh) (defining ''sovereign entity'').

[102] 12 U.S.C. 5365(e)(2)–(3). ''Company'' is defined for purposes of the proposed rule to mean a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization. *See* proposed rule § 252.92(h).

[103] *See* 12 U.S.C. 5365(b)(1)(B)(iv) (allowing the Board to establish additional prudential standards for covered companies as the Board, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate) and 5368 (providing the Board with general rulemaking authority); *see also* section 5(b) of the BHC Act of 1956, as amended (12 U.S.C. 1844(b)); and section 8(b) of FDI Act (12 U.S.C. 1818(b)). Section 5(b) of the BHC Act provides the Board with the authority to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of the BHC Act. Section 8(b) of the FDI Act allows the Board to issue to bank holding companies an order to cease and desist from unsafe and unsound practices.

[104] *See generally* proposed rule § 252.97 (exempting direct claims on, and portions of claims that are directly and fully guaranteed as to principal and interest by, the United States and its agencies and direct claims on, and portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations by a U.S. government sponsored entity as determined by the Board.)

[105] *See* 12 U.S.C. 5365(e)(2); *see also* proposed rule § 252.93.

[106] *See* proposed rule § 252.92(g); *see also* proposed rule § 252.92(kk) (defining ''total capital'').

[107] *See* 12 CFR 12 CFR 215.3(i); 223.3(d); *see also* 12 CFR 32.2(b).

[108] *See* proposed rule § 252.92(g).

countercyclical buffer.[109] In addition the, the BCBS capital surcharge framework for G–SIBs builds on the tier 1 common equity requirement in Basel III.[110] In addition, the Federal Reserve focused on tier 1 common equity in the SCAP conducted in early 2009 and again in the CCAR conducted in early 2011 to assess the capacity of bank holding companies to absorb projected losses.[111]

Question 28: Are the measures of ''capital stock and surplus'' in the proposed rule effective in light of the intent and purpose of section 165(e) or would a measure of ''capital stock and surplus'' that focuses on tier 1 common equity be more effective? What other alternatives to the proposed definition of ''capital stock and surplus'' should the Board consider?

c. Section 252.93: Credit Exposure Limit

Section 252.93 of the proposed rule contains the key quantitative limitations on credit exposure of a covered company to a single counterparty.[112] As noted above, the Board has determined to limit the ''aggregate net credit exposure'' of a covered company to a counterparty. ''Aggregate net credit exposure'' is defined to mean the sum of all net credit exposures of a covered company to a single counterparty.[113] As described in detail below, sections 252.94 and 252.95 of the proposed rule explain how to calculate gross and net credit exposure in order to arrive at the aggregate net credit exposure relevant to the single-counterparty credit limit in section 252.93.[114]

There are two separate limits contained in section 252.93 of the proposed rule. The general limit provides that no covered company may have aggregate net credit exposure to any unaffiliated counterparty that exceeds 25 percent of the capital stock and surplus of the covered company.[115] There is also a second, more stringent limit for aggregate net credit exposure between major covered companies and major counterparties. Specifically, no major covered company may have aggregate net credit exposure to any unaffiliated major counterparty that exceeds 10 percent of the capital stock and surplus of the major covered company.[116] As discussed above, the Dodd-Frank Act grants the Board authority to impose stricter limits on covered companies with a larger systemic footprint and indeed requires the Board to impose stricter single-counterparty credit limits on covered companies with a larger systemic footprint.

Question 29: What other limits or modifications to the proposed limits on aggregate net credit exposure should the Board consider?

In accord with the directive of section 165, the proposed rule imposes a more conservative limit on larger covered companies that have a larger systemic footprint.[117] The Board recognizes, however, that size is only a rough proxy for the systemic footprint of a company. Additional factors specific to a firm, including the nature, scope, scale, concentration, interconnectedness, mix of its activities, its leverage, and its off-balance-sheet exposures, among other factors, may be determinative of a company's systemic footprint.[118] The BCBS proposal on capital surcharges for systemically important banking organizations, for example, uses a twelve factor approach to determine the systemic importance of a global banking organization.[119] Moreover, the Board recognizes that drawing one line through the covered company population and imposing stricter limits on exposures between major covered companies and major counterparties may not take into account nuances that might be captured by other approaches.

Question 30: Should the Board adopt a more nuanced approach, like the BCBS approach, in determining which covered companies should be treated as major covered companies or which counterparties should be considered major counterparties?

Question 31: Should the Board introduce more granular categories of covered companies to determine to appropriate net credit exposure limit? If so, how could such granularity best be accomplished?

Section 165(e) provides the Board with discretion to determine how a covered company measures the amount of credit exposure in various transaction types. As noted above, the proposed rule limits *aggregate net* credit exposure of a covered company to an unaffiliated counterparty. ''Aggregate net credit exposure'' is defined in the proposed rule to be a measure that recognizes certain credit risk mitigants, including netting agreements for certain types of transactions, most forms of collateral with a haircut, and guarantees and other forms of credit protection.[120] The Board recognizes that while net credit exposure limits reduce the risk that the failure of a single counterparty could significantly undermine the financial strength of a covered company, net limits also understate the level of interconnectedness among financial companies. While gross credit exposure limits might more effectively capture interconnectedness among financial companies, the Board has not proposed supplementary gross limits at this time due to the tendency of gross limits to significantly overstate the credit risk inherent in any given transaction.

Question 32: Should the Board supplement the net credit exposure limit with limits on gross credit exposure for all covered companies or a subset of covered company, i.e., major covered companies? Explain why or why not.

d. Section 252.94: Gross Credit Exposure

Section 252.94 of the proposed rule explains how a covered company would be required calculate its ''gross credit exposure'' on a credit transaction with a counterparty. ''Gross credit exposure'' is defined to mean, with respect to any credit transaction, the credit exposure of the covered company to the counterparty before adjusting for the effect of qualifying master netting agreements, eligible collateral, eligible guarantees, eligible credit derivatives and eligible equity derivatives, and other eligible hedges, i.e., a short position in the counterparty's debt or equity security.[121] Consistent with the statutory definition of credit exposure, the proposed rule defines ''credit transaction'' to mean, with respect to a counterparty, any (i) Extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding advised or other uncommitted lines of credit; (ii) repurchase or reverse repurchase agreement with the counterparty; (iii) securities lending or securities borrowing transaction with the counterparty; (iv) guarantee, acceptance, or letter of credit (including any

[109] See Basel III framework, *supra* note 34.

[110] *See* BCBS capital surcharge framework, *supra* note 35.

[111] *See, e.g., The Supervisory Capital Assessment Program: Overview of Results* (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf* (hereinafter SCAP Overview of Results); and 76 FR 74631, 74636 (December 1, 2011).

[112] *See* proposed rule § 252.93.

[113] *See* proposed rule § 252.92(c).

[114] *See* proposed rule §§ 252.94 & 252.95.

[115] *See* proposed rule § 252.93(a).

[116] *See* proposed rule § 252.93(b).

[117] *See* 12 U.S.C. 5365(a).

[118] *See, e.g.,* 12 U.S.C. 5323(a).

[119] *See* BCBS capital surcharge framework, *supra* note 35.

[120] *See* proposed rule § 252.92(c) (defining ''aggregate net credit exposure'') and § 252.95 (describing how to calculate aggregate net credit exposure taking into accounting netting, collateral, guarantees and other forms of credit protection).

[121] *See* proposed rule § 252.92(x). Section 252.95 of the proposed rule explains how these adjustments are made.

confirmed letter of credit or standby letter of credit) issued on behalf of the counterparty; (v) purchase of, or investment in, securities issued by the counterparty; (vi) credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty; (vii) credit exposure to the counterparty in connection with a credit derivative or equity derivative transaction between the covered company and a third party, the reference asset of which is an obligation or equity security issued by the counterparty;[122] and (viii) any transaction that is the functional equivalent of the above, and any similar transaction that the Board determines to be a credit transaction for purposes of this subpart.[123]

Question 33: Are the definitions of ''credit transaction'' appropriate in light of the purpose and intent of the Dodd-Frank Act? If not, explain why not?

Question 34: What transactions, if any, should be exempt from the definition of credit transaction?

Section 252.94 describes how the gross credit exposure of a covered company to a counterparty on a credit transaction should be calculated for each type of credit transaction described above.[124] In particular, section 252.94(a) of the proposed rule provides that, for purposes of calculating gross credit exposure:

(i) The value of loans by a covered company to a counterparty (and leases in which the covered company is the lessor and the counterparty is the lessee) is equal to the amount owed by the counterparty to the covered company under the transaction.

(ii) The value of debt securities held by the covered company that are issued by the counterparty is equal to the greater of (i) the amortized purchase price or market value for trading and available for sale securities, or (ii) the amortized purchase price for securities held to maturity.

(iii) The value of equity securities held by the covered company that are issued by the counterparty is equal to the greater of the purchase price or market value.

(iv) The value of repurchase agreements is equal to (i) the market value of the securities transferred by the covered company to the counterparty plus (ii) an add-on equal to the market value of the securities transferred multiplied by the collateral haircut set forth in section 252.95 (Table 2) that is applicable to the securities transferred.

(v) The value of reverse repurchase agreements is equal to the amount of cash transferred by the covered company to the counterparty.

(vi) Securities borrowing transactions are valued at the amount of cash collateral plus the market value of securities collateral transferred by the covered company to the counterparty.

(vii) Securities lending transactions are valued at (i) the market value of the securities lent by the covered company to the counterparty plus (ii) an add-on equal to the market value of the securities lent multiplied by the collateral haircut set forth in section 252.95 (Table 2) that is applicable to the securities lent.

(viii) Committed credit lines extended by a covered company to the counterparty are valued at the face amount of the credit line.

(ix) Guarantees and letters of credit issued by a covered company on behalf of the counterparty are equal to the maximum potential loss to the covered company on the transaction.

(x) Derivative transactions between the covered company and the counterparty not subject to a qualifying master netting agreement, are valued in an amount equal to the sum of (i) the current exposure of the derivatives contract equal to the greater of the mark-to-market value of the derivative contract or zero and (ii) the potential future exposure of the derivatives contract, calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor, set forth in section 252.94 (Table 1).

(xi) Derivative transactions between the covered company and the counterparty subject to a qualifying master netting agreement, are valued in an amount equal to the exposure at default amount calculated under 12 CFR part 225, appendix G, § 32(c)(6).

(xii) Credit or equity derivative transactions between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of the counterparty, are valued in an amount equal to the lesser of the face amount of the transaction or the maximum potential loss to the covered company on the transaction.

Question 35: What alternative or additional valuation rules should the Board consider for calculating gross credit exposure?

Question 36: What impediments to calculating gross credit exposure in the manner described above would covered companies face?

In the valuation rules described above, trading and available-for-sale debt securities held by the covered company are valued at the greater of amortized purchase price or market value in section 252.94(a)(2) of the proposed rule. Similarly, equity securities held by the covered company are valued at the greater of purchase price or market value in section 252.94(a)(3) of the proposed rule. The valuation rule for these types of securities requires a covered company to revalue upwards the amount of an investment in such securities when the market value of the securities increases. In these circumstances, the valuation rule merely reflects the covered company's greater financial exposure to the counterparty and reduces the covered company's ability to engage in additional transactions with a counterparty as the covered company's exposure to the counterparty increases.

The valuation rules also provide that the amount of the covered company's investment in these securities can be no less than the purchase price paid by the covered company for the securities, even if the market value of the securities declines below the purchase price. Using the purchase price of the securities as a floor for valuing them would appear to be appropriate for several reasons. First, it ensures that the value of the securities never falls below the amount of funds actually transferred by the covered company to the counterparty in connection with the investment. Second, the purchase price floor would limit the ability of a covered company to provide additional funding to a counterparty as the counterparty approaches insolvency. If the proposed rule were to value investments in securities issued by a counterparty strictly at market value, the covered company could lend substantially more funds to the counterparty as the counterparty's financial condition worsened. As the financial condition of the counterparty declines, the market value of the counterparty's securities held by the covered company would also likely decline, allowing the covered company to provide additional funding to the counterparty under the proposed rule. This type of increasing support for a counterparty in distress could vitiate the public policy goals of section 165(e) by permitting a covered company to exceed the regulatory single-counterparty limits through serial credit extensions to a collapsing counterparty.

[122] ''Credit derivative'' and ''equity derivative'' are defined in sections 252.92(m) and (v) of the proposed rule, respectively.

[123] *See* proposed rule § 252.92 (n). The definition of ''credit transaction'' in the proposed rule is similar to the definition of ''credit exposure'' in section 165(e) of the Dodd-Frank Act. *See* 12 U.S.C. 5365(e)(3).

[124] *See* proposed rule § 252.94(a)(1)–(12).

Question 37: Does the requirement to use the greater of purchase price or market value introduce significant burden for covered companies? Would the use of the market value alone be consistent with the purposes of section 165(e)?

The add-on included in the gross valuation rule for repurchase agreements and securities lending transactions (set forth in sections 252.94(a)(4) and 252.94(a)(7)) of the proposed rule is intended to capture the market volatility (and associated potential increase in counterparty exposure amount) of the securities transferred or lent by the covered company in these transactions.

The final gross credit exposure calculation amounts noted in sections 252.94(a)(10)–(12) of the proposed rule address derivative transactions. The proposed rule addresses both credit exposure of a covered company to a derivative counterparty, which is valued as the sum of the current exposure and the potential future exposure of the contract, and credit exposure of a covered company to the issuer of the reference obligation of certain credit and equity derivatives when the covered company is the protection provider, which is valued on a notional basis.[125]

Question 38: The Board seeks comment on all aspects of the proposed approach to calculating gross credit exposures for securities financing and derivative transactions, including the add-on in the proposed gross valuation rule for repurchase agreements and securities lending transactions.

- The Board recognizes that the credit risk targeted by the valuation rule for securities lending transactions and repurchase agreements—i.e., that a counterparty would fail at the same time that the underlying securities are rising in value—may be smaller than the credit risk associated with reverse repurchase agreements or securities borrowing transactions. Should the Board consider a lower add-on than the haircuts in section 252.95 (Table 2) to reflect this difference? If so, how should the Board calibrate the add-on?
- Will the proposed add-on approach to valuing credit exposure for securities lending transactions and repurchase agreements lead to significant changes in current practices in those markets?
- Is the valuation approach for a derivative transaction between a covered company and a counterparty—i.e., a combination of the current exposure and a measure of potential future exposure of the contract—appropriate? What alternative valuation approaches for derivative transactions should the Board consider?
- Is the valuation approach for a derivative transaction between a covered company and a third party appropriate in the case of a derivative transaction where the covered company is the protection provider and the reference asset is issued by the counterparty?

The proposed rule generally allows covered companies to calculate gross credit exposure to a counterparty for derivatives contracts with that counterparty subject to a qualifying master netting agreement by using the Basel II-based exposure at default calculation set forth in the Board's advanced approaches capital rules (12 CFR part 225, appendix G, § 32(c)(6)).[126]

With respect to cleared and uncleared derivatives, the amount of initial margin and excess variation margin (i.e., variation margin in excess of that needed to secure the mark-to-market value of a derivative) posted to a counterparty should be treated as credit exposure to the counterparty unless the margin is held in a segregated account at a third party custodian. In the case of cleared derivatives, a covered company's contributions to the guaranty fund of a central counterparty (CCP) would be considered a credit exposure to the CCP and valued at notional amount.[127]

Question 39: Should margin posted and contributions to a CCP guaranty fund be considered a credit exposure for purposes of the proposed rule? The Board recognizes that there are competing policy concerns in considering whether to limit a covered company's exposure to central counterparties. The Board seeks comment on the benefits and drawbacks of such limits.

Section 252.94(b) of the proposed rule includes the statutory attribution rule that provides that a covered company must treat a transaction with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.[128]

The Board notes that an overly broad interpretation of the attribution rule in the context of section 165(e) would lead to inappropriate results and would create a daunting tracking exercise for covered companies. For example, if a covered company makes a loan to a counterparty that in turn uses the loan to purchase goods from a third party, the attribution rule could be read to mean that the covered company would have a credit exposure to that third party, because the proceeds of the loan with the counterparty are used for the benefit of, or transferred to, the third party. The Board recognizes the difficulty in monitoring such transactions and the limited value in tracking such money flows for purposes of maintaining the integrity of the single-counterparty credit limit regime. The Board thus proposes to minimize the scope of application of this attribution rule consistent with preventing evasion of the single-counterparty credit limit.

Question 40: The Board requests comment on whether the proposed scope of the attribution rule is appropriate or whether additional regulatory clarity around the attribution rule would be appropriate. What alternative approaches to applying the attribution rule should the Board consider? What is the potential cost or burden of applying the attribution rule as described above?

e. Section 252.95: Net Credit Exposure

As discussed above, the proposed rule imposes limits on a covered company's net credit exposure to a counterparty. ''Net credit exposure'' is defined to mean, with respect to any credit transaction, the gross credit exposure of a covered company calculated under section 252.94, as adjusted in accordance with section 252.95.[129] Section 252.95 of the proposed rule explains how to convert gross credit exposure amounts to net credit exposure amounts by taking into account eligible collateral, eligible guarantees, eligible credit and equity derivatives, other eligible hedges (i.e., a short position in the counterparty's debt or equity security), and for securities financing transactions, the effect of bilateral netting agreements.[130]

[125] *See* proposed rule § 252.94(a)(10)–(12). ''Credit derivative'' is defined in section 252.92(m) of the proposed rule, and ''equity derivative'' is defined in section 252.92(v) of the proposed rule. ''Derivative transaction'' is defined in section 252.92(p) of the proposed rule in the same manner as it is defined in section 610 of the Dodd-Frank Act. *See* Dodd-Frank Act, Public Law 111–203, § 610, 124 Stat. 1376, 1611 (2010).

[126] *See* proposed rule § 252.95(a). ''Qualifying master netting agreement'' is defined in section 252.92(ee) of the proposed rule in a manner consistent with the Board's advanced risk-based capital rules for bank holding companies.

[127] The Board notes that it has the authority to deem margin posted to be a credit exposure as such exposure is part of counterparty credit exposure to the covered company arising in connection with a derivative transaction. The Board also has broad authority in section 165(e) to determine that any similar transaction is a credit exposure. 12 U.S.C. 5365(e)(3)(E)–(F).

[128] *See* proposed rule § 252.94(b); *see also* 12 U.S.C. 5365(e)(4).

[129] *See* proposed rule § 252.92(bb).

[130] *See* proposed rule § 252.95.

Collateral

Section 252.95(b) of the proposed rule explains the impact of eligible collateral when calculating net credit exposure. ''Eligible collateral'' is defined to include (i) Cash on deposit with a covered company (including cash held for the covered company by a third-party custodian or trustee); (ii) debt securities (other than mortgage- or asset-backed securities) that are bank-eligible investments; (iii) equity securities that are publicly traded; or (iv) convertible bonds that are publicly traded.[131] For any of these asset types to count as eligible collateral for a credit transaction, the covered company generally must have a perfected, first priority security interest in the collateral (or, if outside of the United States, the legal equivalent thereof). This list of eligible collateral is similar to the list of eligible collateral in the Basel II standardized capital rules.

Question 41: Should the list of eligible collateral be broadened or narrowed?

In computing its net credit exposure to a counterparty for a credit transaction, a covered company may reduce its gross credit exposure on a transaction by the adjusted market value of any eligible collateral.[132] ''Adjusted market value'' is defined in section 252.92(a) of the proposed rule to mean, with respect to any eligible collateral, the fair market value of the eligible collateral after application of the applicable haircut specified in section 252.95 (Table 2) for that type of eligible collateral. The haircuts in Table 2 are consistent with the standard supervisory market price volatility haircuts in Appendix G to Regulation Y.

Question 42: Should a covered company be able to use its own internal estimates for collateral haircuts as permitted under Appendix G to Regulation Y?

A covered company *has the choice* of whether to reduce its gross credit exposure to a counterparty by the adjusted market value of any eligible collateral.[133] If a covered company chooses to reduce its gross credit exposure by the adjusted market value of eligible collateral, however, the covered company would be required to include the adjusted market value of the eligible collateral when calculating its gross credit exposure to *the issuer of the collateral.* In effect, the covered company would have shifted its credit exposure from the original counterparty to the issuer of the eligible collateral. The amount of credit exposure to the original counterparty and the issuer of the eligible collateral will fluctuate over time based on the adjusted market value of the eligible collateral. Collateral that previously met the definition of eligible collateral under the proposed rule but over time ceases to do so would no longer be eligible to reduce gross credit exposure.

A covered company would have the option of whether or not to use eligible collateral as a credit risk mitigation tool in recognition of the fact that tracking the market movements of a diverse pool of collateral can, in some circumstances, be operationally burdensome. In this respect, a covered company may opt not to recognize eligible collateral and thus avoiding potentially burdensome tracking of collateral.

Question 43: Is recognizing the fluctuations in the value of eligible collateral the correct approach, and what would be the burden on covered companies in calculating such changes on a daily basis?

Question 44: What is the burden on a covered company associated with the proposed rule's approach to changes in the eligibility of collateral? Should the Board instead consider introducing stricter collateral haircuts for collateral that ceases to be eligible collateral?

So as not to dis-incentivize overcollateralization, the credit exposure to the collateral issuer is capped so that it will never exceed the credit exposure to the original counterparty.[134] A covered company would, in every case, continue to have credit exposure to the original counterparty to the extent that the adjusted market value of the eligible collateral does not equal the full amount of the credit exposure to the original counterparty.

For example, under the proposed rule, the treatment of eligible collateral would work as follows. Assume a covered company makes a $1,000 loan to a counterparty, creating $1,000 of gross credit exposure to that counterparty, and the counterparty provides eligible collateral issued by a third party that has $700 of adjusted market value. The covered company may choose to reduce its credit exposure to the original counterparty by the adjusted market value of the eligible collateral. As a result, the covered company would have gross credit exposure of $700 to the issuer of the collateral and $300 net credit exposure to the original counterparty that posted the collateral.

As noted above, the amount of credit exposure to the original counterparty and the issuer of the eligible collateral will fluctuate over time based on movements in the adjusted market value of the eligible collateral. For example, if the adjusted market value of the eligible collateral decreases to $400 in the previous example, the covered company's net credit exposure to the original counterparty would increase to $600, and its gross credit exposure to the collateral issuer would decrease to $400. By contrast, in the event of an increase in the adjusted market value of the eligible collateral to $800, the covered company's gross credit exposure to the issuer of the eligible collateral would increase to $800 and its net credit exposure to the original counterparty would decline to $200. In each case, the covered company's credit exposure would be capped at the original amount of the exposure created by the loan or $1,000—even if the adjusted market value of the eligible collateral exceeded $1,000.

Question 45: Is the approach to eligible collateral that allows the covered company to choose whether or not to recognize eligible collateral and shift credit exposure to the issuer of eligible collateral appropriate? What alternatives to this approach should the Board consider?

Question 46: Alternatively, should eligible collateral be treated the same way eligible guarantees and eligible credit and equity derivative hedges are treated (as described below), thus requiring a mandatory look-through to eligible collateral?

Unused Credit Lines

Section 252.95(c) of the proposed rule concerns the unused portion of certain extensions of credit. In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a covered company may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the covered company does not have any legal obligation to advance additional funds under the facility until the counterparty provides qualifying collateral equal to or greater than the entire used portion of the facility.[135] To qualify for this reduction, the credit contract must specify that any used portion of the credit extension must be fully secured at all times by collateral that is either (i) Cash; (ii)

[131] *See* proposed rule § 252.92(q); *see also* proposed rule § 252.92(dd) (defining ''publicly traded'').

[132] *See* proposed rule § 252.95(b).

[133] The Board notes that it has the authority to treat eligible collateral as a gross credit exposure to the collateral issuer as a consequence of the broad grant of authority to the Board in section 165(e) to determine that any other similar transaction is a credit exposure. *See* 12 U.S.C. 5365(e)(3)(F).

[134] *See* proposed rule § 252.95(b).

[135] *See* proposed rule § 252.95(c).

obligations of the United States or its agencies; or (iii) obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board.[136]

Question 47: What alternative approaches, if any, to the proposed treatment of the unused portion of certain credit facilities should the Board consider?

Eligible Guarantees

Section 252.95(d) of the proposed rule describes how to reflect eligible guarantees in calculations of net credit exposure to a counterparty.[137] Eligible guarantees are guarantees that meet certain conditions, including having been written by an eligible protection provider.[138] An eligible protection provider includes a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a multilateral development bank, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, a depository institution, a bank holding company, a savings and loan holding company, a securities broker or dealer registered with the SEC, an insurance company that is subject to supervision by a State insurance regulator, a foreign banking organization, a non-U.S.-based securities firm or non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be), and a qualifying central counterparty.[139]

Question 48: In what ways should the definition of eligible protection provider be expanded or narrowed?

Question 49: Are there any additional or alternative requirements the Board should place on eligible protection providers to ensure their capacity to perform on their guarantee obligations?

In calculating its net credit exposure to the counterparty, a covered company would be required to reduce its gross credit exposure to the counterparty by the amount of any eligible guarantee from an eligible protection provider.[140] The covered company would then have to include the amount of the eligible guarantee when calculating its gross credit exposure to the eligible protection provider.[141] Also, as is the case with eligible collateral, in no event would a covered company's gross credit exposure to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the original counterparty on the credit transaction prior to the recognition of the eligible guarantee.[142] The exposure to the eligible protection provider is effectively capped at the amount of the credit exposure to the original counterparty even if the amount of the eligible guarantee is larger than the original exposure. A covered company would continue to have credit exposure to the original counterparty to the extent that the eligible guarantee does not equal the full amount of the credit exposure to the original counterparty.

For example, assume a covered company makes a $1,000 loan to an unaffiliated counterparty and obtains a $700 eligible guarantee on the loan from an eligible protection provider. The covered company would have gross credit exposure of $700 to the protection provider as a result of the eligible guarantee and $300 net credit exposure to the original counterparty. As a second example, assume a covered company makes a $1,000 loan to an unaffiliated counterparty and obtains a $1,500 eligible guarantee from an eligible protection provider. The covered company would have $1,000 gross credit exposure to the protection provider (capped at the amount of the original exposure), but the covered company would have no net credit exposure to the original counterparty as a result of the eligible guarantee.

The Board proposes to require a covered company to reduce its gross exposure to a counterparty by the amount of an eligible guarantee in order to ensure that concentrations in exposures to guarantors are captured by the regime. This requirement is meant to limit the ability of a covered company to extend loans or other forms of credit to a large number of high risk borrowers that are guaranteed by a single guarantor. The proposed rule also would narrow the set of eligible protection providers to sovereign entities and regulated financial companies in order to limit the ability of covered companies to arbitrage the rule by obtaining multiple small guarantees (each beneath the covered company's limit) from high-risk guarantors to offset a large exposure (exceeding the covered company's limit) to a single counterparty.

Question 50: Should covered companies have the choice of whether or not to fully shift exposures to eligible protection providers in the case of eligible guarantees or to divide an exposure between the original counterparty and the eligible protection provider in some manner?

Question 51: Would a more conservative approach to eligible guarantees be more appropriate to penalize financial sector interconnectedness–for example, one in which the covered company would be required to recognize gross credit exposure both to the original counterparty and the eligible protection provider in the full amount of the original credit exposure? What other alternative approaches to the treatment of eligible guarantees should the Board consider?

Eligible Credit and Equity Derivative Hedges

Section 252.95(e) describes the treatment of eligible credit and equity derivatives in the case where the covered company is the protection purchaser.[143] In the case where a covered company is a protection purchaser, such derivatives can be used to mitigate gross credit exposure and are treated in the same manner as an eligible guarantee. A covered company may only recognize *eligible* credit and equity derivative hedges for purposes of calculating net credit exposure.[144] These derivatives must meet certain criteria, including having been written by an eligible protection provider.[145] An eligible credit derivative hedge must be simple in form, including single-name or standard, non-tranched index credit derivatives. An eligible equity derivative hedge may only include an

[136] *Id.*

[137] *See* proposed rule § 252.95(d).

[138] *See* proposed rule § 252.92(t) for the definition of ''eligible guarantee'' and for a description of the requirements of an eligible guarantee.

[139] *See* proposed rule § 252.29(u). Eligible credit and equity derivatives, as described below, also must be written by eligible protection providers. ''Qualifying central counterparty'' is defined in section 252.92(ee) of the proposed rule.

[140] *See* proposed rule § 252.95(d).

[141] *See* proposed rule § 252.95(d)(1).

[142] *See* proposed rule § 252.95(d)(2).

[143] *See* proposed rule § 252.95(e).

[144] By contrast, in section 252.94(a)(12) of the proposed rule, where the covered company is the protection provider, *any* credit or equity derivative written by the covered company is included in the calculation of the covered company's gross credit exposure to the reference obligor.

[145] *See* proposed rule § 252.92(r) and (s) defining ''eligible credit derivative'' and ''eligible equity derivative'', respectively. ''Eligible protection provider'' is defined in § 252.92(u) of the proposed rule. The same types of organizations that are eligible protection providers for the purposes of eligible guarantees are eligible protection providers for purposes of eligible credit and equity derivatives.

equity-linked total return swap and does not include other more, complex forms of equity derivatives, such as purchased equity-linked options.

Question 52: What types of derivatives should be eligible for mitigating gross credit exposure and, in particular, are there are more complex forms of derivatives that should be eligible hedges?

The treatment of eligible credit and equity derivative hedges in the proposed rule is much like that of guarantees. A covered company would be required to reduce its gross credit exposure to a counterparty by the notional amount of any eligible credit or equity derivative hedge that references the counterparty if the covered company obtains the derivative from an eligible protection provider.[146] In these circumstances, the covered company would be required to include the notional amount of the eligible credit or equity derivative hedge in calculating its gross credit exposure to the eligible protection provider.[147] As is the case for eligible collateral and eligible guarantees, the gross exposure to the eligible protection provider may in no event be greater than it was to the original counterparty prior to recognition of the eligible credit or equity derivative.[148]

For example, a covered company holds $1,000 in bonds issued by Company A, and the covered company purchases an eligible credit derivative in a notional amount of $800 from Protection Provider X, which is an eligible protection provider, to hedge its exposure to Company A. The covered company would now treat Protection Provider X as its counterparty, and has an $800 credit exposure to it. The covered company also continues to have credit exposure of $200 to Company A. Similarly, consider the case of an eligible equity derivative, where a covered company holds $1,000 in equity securities issued by Company B and purchases an eligible equity-linked total return swap in a notional amount of $700 from Protection Provider Y, an eligible protection provider, to hedge its exposure to Company B. The covered company would now treat Protection Provider Y as its counterparty, and has a credit exposure to it of $700. The covered company also has credit exposure to Company B of $300.

The proposed rule generally treats eligible credit and equity derivatives in the same manner as non-derivative credit enhancement instruments such as eligible guarantees, and requires covered companies generally to consider themselves as having credit exposure to the protection provider in an amount equal to the notional or face value of the hedge instrument. In essence, the rule only recognizes simple derivative hedges on a transaction-to-transaction basis. The rule does not accommodate proxy hedging or portfolio hedging and uses a simple substitution approach of guarantor for obligor.

Question 53: What alternative approaches, if any, should the Board consider to capture the risk mitigation benefits of proxy or portfolio hedges or to permit covered companies to use internal models to measure potential exposures to sellers of credit protection?

Question 54: Should covered companies have the choice to recognize and shift exposures to protection providers in the case of eligible credit or equity derivative hedges or to apportion the exposure between the original counterparty and the eligible protection provider?

Question 55: Would a more conservative approach to eligible credit or equity derivative hedges be more appropriate, such as one in which the covered company would be required to recognize gross notional credit exposure both to the original counterparty and the eligible protection provider?

Other Eligible Hedges

In addition to eligible credit and equity derivatives, a covered company may reduce exposure to a counterparty by the face amount of a short sale of the counterparty's debt or equity security.

Question 56: Rather than requiring firms to calculate gross trading exposures and offset that exposure with eligible credit and equity derivatives or short positions, should the Board allow covered companies to use internal pricing models to calculate the net mark-to-market loss impact of an issuer default, applying a zero percent recovery rate assumption, to all instruments and positions in the trading book? Under this approach, gains and losses would be estimated using full revaluation to the greatest extent possible, and simply summed. For derivatives products, all pricing inputs other than those directly related to the default of the issuer would remain constant. Similar to the proposed approach, only single-name and index credit default swaps, total return swaps, or equity derivatives would be included in this valuation. Would such a models-based approach better reflect traded credit exposures? If so, why?

Netting of Securities Financing Transactions

In calculating its credit exposure to a counterparty, a covered company may net the gross credit exposure amounts of (i) its repurchase and reverse repurchase transactions with a counterparty, and (ii) its securities lending and borrowing transactions with a counterparty, in each case, where the transactions are subject to a bilateral netting agreement with that counterparty.

e. Section 252.96: Compliance

Section 252.96(a) of the proposed rule indicates that a covered company must comply with the requirements of the proposed rule on a daily basis as of the end of each business day and must submit a monthly compliance report.[149] Section 252.96(b) addresses the consequences if a covered company fails to comply with the proposed rule.[150] This section states that if a covered company is not in compliance with respect to a counterparty due to a decrease in the covered company's capital, the merger of a covered company with another covered company, or the merger of two unaffiliated counterparties of the covered company, the covered company will not be subject to enforcement actions with respect to such noncompliance for a period of 90 days (or such shorter or longer period determined by the Board to be appropriate to preserve the safety and soundness of the covered company or financial stability) if the company uses reasonable efforts to return to compliance with the proposed rule during this period. The covered company may not engage in any additional credit transactions with such a counterparty in contravention of this rule during the compliance period, except in cases where the Board determines that such additional credit transactions are necessary or appropriate to preserve the safety and soundness of the covered company or financial stability. In granting approval for any such special temporary exceptions, the Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards. The Board notes that section 165(e) of the Dodd-Frank Act contains a provision allowing the Board to exempt transactions, in whole or part, from the definition of the term ''credit exposure'' if the Board finds that the exemption is in the public

[146] *See* proposed rule § 252.95(e).

[147] *See* proposed rule § 252.95(e)(1).

[148] *See* proposed rule § 252.95(e)(2).

[149] *See* proposed rule § 252.96(a). Also, *see supra* note 17.

[150] *See* proposed rule § 252.96(b).

interest and is consistent with the purposes of this subsection.[151]

Question 57: Are there additional non-compliance circumstances for which some cure period should be provided?

Question 58: Is the 90-day cure period appropriate and is it appropriate to generally prohibit additional credit transactions with the affected counterparty during the cure period? If not, why not?

Section 252.97: Exemptions

Section 252.97 of the proposed rule sets forth certain exemptions.[152] Section 165(e)(6) of the Dodd-Frank Act states that the Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure'' for purposes of this subsection, if the Board finds that the exemption is in the public interest and is consistent with the purposes of this subsection.[153]

The first exemption is for direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by the United States and its agencies.[154] The exemption in section 252.97 of the proposed rule clarifies that, despite the fact that the United States is defined as a counterparty, a covered company's credit exposures to the U.S. government are exempt. Thus, exposures to the U.S. government will not be subject to the limits of the proposed rule. This includes direct holdings of securities issued by the U.S. government and indirect exposure such as the case where U.S. government securities are pledged as collateral. Section 252.95(b) of the proposed rule provides a covered company with the option to shift credit exposure to the issuer of eligible collateral.[155] Where the eligible collateral pledged is U.S. government securities that are directly and fully guaranteed as to principal and interest by the United States and its agencies, the credit exposure would be exempted.

Question 59: Is the scope of the exemption for direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the United States and it agencies appropriate? If not, explain the reasons why in detail and indicate whether there are alternatives the Board should consider. Are there other governmental entities that should receive an exemption from the limits of the proposed rule?

A second exemption from the proposed rule is for direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while these entities are operating under the conservatorship or receivership of the Federal Housing Finance Agency.[156] This provision reflects a policy decision that credit exposures to these government-sponsored entities should not be subject to a regulatory limit for so long as the entities are in the conservatorship or receivership of the U.S. government. As determined by the Board, obligations issued by another U.S. government-sponsored entity would also be exempt. The Board requests comment on whether these exemptions are appropriate.

The third exemption from the proposed rule is for intraday credit exposure to a counterparty.[157] As noted above, the proposed rule requires compliance on a daily end-of-business day basis.[158] This exemption would help minimize the impact of the rule on the payment and settlement of financial transactions. The Board requests comment on whether the exemption for intraday transactions is appropriate in light of the intent and purpose of the proposed rule.

The fourth exemption implements section 165(e)(6) of the Dodd-Frank Act and provides a catchall category to exempt any transaction which the Board determines to be in the public interest and consistent with the purposes of section 165(e).[159]

Question 60: Should other credit exposures be exempted from the limitations of the proposed rule. If so, explain why?

Section 252.97(b) of the proposed rule implements section 165(e)(6) of the Dodd-Frank Act, which provides an exemption for Federal Home Loan Banks.

VI. Risk Management

A. Background

The recent financial crisis highlighted the need for large, complex financial companies to have more robust, enterprise-wide risk management. A number of companies that experienced material financial distress or failed during the crisis had significant deficiencies in key areas of risk management. Two recent reviews of risk management practices of banking companies conducted by the Senior Supervisors Group (SSG) illustrated these deficiencies.[160]

The SSG found that effective oversight of an organization as a whole is one of the most fundamental requirements of prudent risk management. For example, the SSG found that business line and senior risk managers did not jointly act to address a company's risks on an enterprise-wide basis; business line managers made decisions in isolation and at times increased, rather than mitigated, risk; and treasury functions were not closely aligned with risk management processes, preventing market and counterparty risk positions from being readily assessed on an enterprise-wide basis.[161]

The SSG reviews also revealed that solid senior management oversight and engagement was a key factor that differentiated companies' performance during the crisis. Senior managers at successful companies were actively involved in risk management, which includes determining the company's overall risk preferences and creating the incentives and controls to induce employees to abide by those preferences. Successful risk management also depends on senior managers having access to adaptive management information systems to identify and assess risks based on a range of dynamic measures and assumptions. In addition, the SSG found that active involvement of the board of directors in determining a company's risk tolerance was critical to effective risk management and curbing of excessive risk taking. The SSG reported that ''firms are more likely to maintain a risk profile consistent with the board and senior management's tolerance for risk if they establish risk management committees that discuss all significant risk exposures across the firm * * * [and] meet on a frequent basis * * *.''[162]

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish overall risk management requirements as part of the prudential standards to ensure that strong risk management standards are part of the regulatory and supervisory framework

[151] *See* 12 U.S.C. 5365(e)(6).

[152] *See* proposed rule § 252.97.

[153] *See* 12 U.S.C. 5365(e)(6).

[154] *See* proposed rule § 252.97(a)(1).

[155] *See* proposed rule § 252.95(b).

[156] *See* proposed rule § 252.97(a)(2).

[157] *See* proposed rule § 252.97(a)(3).

[158] *See* proposed rule § 252.96(a).

[159] *See* 12 U.S.C. 5365(e)(6); proposed rule § 252.97(a)(4).

[160] *See* 2008 SSG Report and 2009 SSG, *supra* notes 58 and 59.

[161] *See* 2008 SSG Report, *supra* note 58, at 3–5.

[162] *See* 2008 SSG Report, *supra* note 58, at 8; *see also* 2009 SSG Report, *supra* note 59, at 2–5.

for covered companies.[163] More generally, section 165(h) of the Dodd-Frank Act directs the Board to issue regulations requiring publicly traded nonbank covered companies and publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees.[164] Under the statute, a risk committee required by section 165(h) must be responsible for the oversight of enterprise-wide risk management practices of the company, include such number of independent directors as the Board may determine appropriate, and include at least one risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

The Board is proposing to address the risk management weaknesses observed during the recent crisis and implement the risk management requirements of the Dodd-Frank Act by establishing risk management standards for all covered companies that would (i) Require oversight of enterprise-wide risk management by a stand-alone risk committee of the board of directors and chief risk officer (CRO); (ii) reinforce the independence of a firm's risk management function; and (iii) ensure appropriate expertise and stature for the chief risk officer. The proposal would also require bank holding companies with total consolidated assets of $10 billion or more that are publicly traded and are not covered companies (over $10 billion bank holding companies) to establish an enterprise-wide risk committee of the board of directors. Over $10 billion bank holding companies that are not covered companies and are not publicly traded would not be subject to the risk management requirements in this proposal.

The proposed rule seeks to address the risk management problems noted by the SSG and others by mandating the major responsible parties within a company for its enterprise-wide risk management: the risk committee and the CRO. The proposal sets out certain responsibilities of a risk committee, which include the oversight and documentation of the enterprise-wide risk management practices of the company. The proposal also would establish various requirements for a risk committee, including membership with appropriate risk management expertise and an independent chair. The proposed rule also requires a covered company to employ a CRO who will implement appropriate enterprise-wide risk management practices and report to the covered company's risk committee and chief executive officer.

These standards should help address the risk management failures observed during the crisis and their potential contribution to the failure or instability of financial companies by mandating an enterprise-wide structure for managing risk and identifying the responsible parties that supervisors will look to when evaluating a company's risk management practices. This should facilitate more effective identification and management of the company's risk as well as supervisors' ability to monitor the risk management of companies subject to the rule.

In addition, the proposed standards seek to meet the requirements of the Dodd-Frank Act by imposing regulatory standards for risk management on covered companies and over $10 billion bank holding companies that are publicly traded. The Board does not currently impose regulatory risk management standards on bank holding companies generally; the Board traditionally has addressed risk management through supervisory guidance. The proposed standards would be more stringent for risk committees of covered companies than for risk committees of over $10 billion bank holding companies. The Board expects the expertise of the risk committee membership to be commensurate with the complexity and risk profile of the organizations. Thus, the requirements of the proposed rule would increase in stringency with the systemic footprint of the company.

The Board emphasizes that the risk committee and overall risk management requirements contained in the proposed rule supplement the Board's existing risk management guidance and supervisory expectations.[165] All banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk.

B. Overview of the Proposed Rule

1. Risk Committee Requirements

The proposed rule would require that each covered company and each over $10 billion bank holding company establish a risk committee of the board of directors to document and oversee, on an enterprise-wide basis, the risk management practices of the company's worldwide operations. Additional proposed requirements relating to the structure and responsibilities of such risk committees are described below.

a. Structure of Risk Committee

Section 252.126(b) of the proposed rule establishes requirements governing the membership and proceedings of a company's risk committee. Consistent with section 165(h)(3)(B) of the Act, the Board proposes that a covered company and over $10 billion bank holding company's risk committee must be chaired by an independent director. The Board views the active involvement of independent directors as vital to robust oversight of risk management and encourages companies generally to include additional independent directors as members of their risk committees.

The concept of director independence is a concept familiar in federal securities law. To promote consistency, the Board proposes to refer to the definition of ''independent director'' in the Securities and Exchange Commission's (SEC) Regulation S–K for companies that are publicly traded in the United States. Under this definition, the Board would not consider a director to be independent unless the company indicates in its securities filings, pursuant to the SEC's Regulation S–K, that the director satisfies the applicable independence requirements of the securities exchange on which the company's securities are listed. These independence requirements generally include limitations on compensation paid to the director or director's family members by the company and prohibitions on material business relationships between the director and the company. In all cases, and consistent with the listing standards of many securities exchanges, the proposed rule excludes from the definition of ''independent director'' a director who is or recently was employed by the company or whose immediate family member is or recently was an executive officer of the company.

In the case of a director of a covered company that is not publicly traded in the United States, the proposed rule would provide that the director is independent only if the company demonstrates to the satisfaction of the Federal Reserve that such director would qualify as an independent director under the listing standards of a securities exchange, if the company were publicly traded on such an exchange. The Board proposes to make these determinations on a case-by-case basis, as appropriate. At a minimum, the

[163] 12 U.S.C. 5365(b)(1)(A).

[164] 12 U.S.C. 5365(h).

[165] *See* Supervision and Regulation Letter SR 08–8 (Oct. 16, 2008), *available at http://www.federalreserve.gov/boarddocs/srletters/2008/SR0808.htm,* and Supervision and Regulation Letter SR 08–9 (Oct. 16, 2008), *available at http://www.federalreserve.gov/boarddocs/srletters/2008/SR0809.htm.*

proposed rule provides that the Board would not find a director to be independent if the director or a member of the director's immediate family member is or recently was an executive officer of the company. In making independence determinations, the Board expects to analyze other indicia of independence, including compensation limitations and business relationship prohibitions discussed above.

In addition to the independent director requirements, the proposed rule would require at least one member of a company's risk committee to have risk management expertise that is commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. However, given the importance of risk management oversight, the Board expects that a risk committee's members generally will have an understanding of risk management principles and practices relevant to the company. Risk committee members should also have experience developing and applying risk management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations (or, if applicable, nonbank financial companies).

The Board believes that the requisite level of risk management expertise for a company's risk committee can vary depending on the risks posed by the company to the stability of the U.S. financial system. The Board expects that a company's risk committee members should have risk management expertise commensurate with the company's capital structure, risk profile, complexity, activities, size and other appropriate risk-related factors. Thus, the Board expects that the risk committees of covered companies that pose greater risks to the U.S. financial system would have members with commensurately greater risk management expertise than the risk committees of other companies that pose less risk.

The proposed rule also would establish certain procedural requirements for risk committees. Specifically, the proposed rule would require a company's risk committee to have a formal, written charter that is approved by the company's board of directors. In addition, the proposed rule would require that a risk committee meet regularly and as needed, and that the company fully document and maintain records of such proceedings, including risk management decisions. The Board expects that these procedural requirements will help ensure that a company's risk management has the appropriate stature within the company's corporate governance framework.

Question 61: Should the Board consider specifying by regulation additional qualifications for director independence? If so, what factors should the Board consider in establishing these qualifications?

Question 62: Would it be appropriate for the Board to require the membership of a risk committee to include more than one independent director under certain circumstances? If so, what factors should the Board consider in establishing these requirements?

Question 63: Should the Board consider specifying by regulation the minimum qualifications, including educational attainment and professional experience, for risk management expertise on a risk committee?

Question 64: What alternatives to the requirements for the structure of the risk committee and related requirements should the Board consider?

b. Responsibilities of Risk Committee

Section 252.126(c) of the proposed rule sets out certain responsibilities of a risk committee. The proposed rule would generally require a company's risk committee to document and oversee the enterprise-wide risk management policies and practices of the company. Consistent with the enterprise-wide risk management requirement in section 165(h)(3)(A) of the Act, a company's risk committee would be required to take into account both its U.S. and foreign operations as part of its risk management oversight.

The proposed rule would require a risk committee to review and approve an appropriate risk management framework that is commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposed rule specifies that a company's risk management framework must include: Risk limitations appropriate to each business line of the company; appropriate policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure; processes and systems for identifying and reporting risks, including emerging risks; monitoring compliance with the company's risk limit structure and policies and procedures relating to risk management governance, practices, and risk controls; effective and timely implementation of corrective actions; specification of management's authority and independence to carry out risk management responsibilities; and integration of risk management and control objectives in management goals and the company's compensation structure.

In general, the Board believes that larger and more complex companies should have more robust risk management practices and frameworks than smaller, less complex companies. Accordingly, as a company grows or increases in complexity, the company's risk committee should ensure that its risk management practices and framework adapt to changes in the company's operations and the inherent level of risk posed by the company to the U.S. financial system.

Question 65: What is the appropriate role of the members of the risk committee in overseeing enterprise-wide risk management practices at the company and is that role effectively addressed by this proposal?

Question 66: Is the scope of review of enterprise-wide risk management that this proposal would require appropriate for a committee of the board of directors? Why or why not?

Question 67: How can the Board ensure that risk committees at companies have sufficient resources to effectively carry out the oversight role described in this proposal?

2. Additional Enhanced Risk Management Standards for Covered Companies

Consistent with section 165(b)(1)(A)(iii) of the Dodd-Frank Act, the proposed rule establishes certain overall risk management standards for covered companies. These enhanced standards are in addition to, and in some cases expand upon, the risk committee requirements discussed above that apply to covered companies and over $10 billion bank holding companies.

a. Appointment of CRO

The Board believes that, in light of the complexity and size of a covered company's operations, it is important for each covered company to have a designated executive officer in charge of implementing and maintaining the risk management framework and practices approved by the risk committee. Accordingly, section 252.126(d) of the proposed rule directs each covered company to appoint a CRO to implement and maintain appropriate enterprise-wide risk management practices for the company.

The proposed rule provides that the specific responsibilities of a covered company's CRO must include direct oversight for: allocating delegated risk

limits and monitoring compliance with such limits; establishing appropriate policies and procedures relating to risk management governance, practices, and risk controls; developing appropriate processes and systems for identifying and reporting risks, including emerging risks; managing risk exposures and risk controls; monitoring and testing risk controls; reporting risk management issues and emerging risks; and ensuring that risk management issues are effectively resolved in a timely manner. The proposed rule specifies that these responsibilities are to be executed on an enterprise-wide basis.

Under the proposed rule, a CRO would be required to have risk management expertise that is commensurate with the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors. For example, the Board would expect that an executive whose qualifications and experience are highly focused in a specific area (e.g., an executive whose primary skills relate to the risks taken by a firm engaged predominantly in consumer or commercial lending) would be unlikely to possess the expertise necessary to effectively manage the risks taken by a firm engaged in more diverse activities (e.g., a large, more complex universal banking organization).

In light of the CRO's central role in ensuring the effective implementation of a covered company's risk management practices, the proposed rule would require a covered company's CRO to report directly to the risk committee and the chief executive officer. Further, the proposed rule would require that the compensation of a covered company's CRO be appropriately structured to provide for an objective assessment of the risks taken by the covered company. This requirement supplements existing Board guidance on incentive compensation.

Question 68: Should the Board consider specifying by regulation the minimum qualifications, including educational attainment and professional experience, for a CRO? If so, what type of additional experience or education is generally expected in the industry for positions of this importance?

Question 69: What alternative approaches to implementing the risk committee requirements established pursuant to the Dodd-Frank Act should the Board consider?

b. Additional Risk Committee Requirements for Covered Companies

The Board proposes that risk committees of covered companies should meet certain additional requirements beyond those described above to ensure that covered companies' risk committees are appropriately structured to oversee the risk of a company with a significant role in the U.S. financial system. Specifically, the Board believes that best practices for covered companies require a risk committee that reports directly to the Board and not as part of or combined with another committee. Thus, section 252.126(b)(5)(i) of the proposed rule would require that a covered company's risk committee not be housed within another committee or be part of a joint committee. In addition, section 252.126(b)(5)(ii) of the proposed rule would require a covered company's risk committee to report directly to the covered company's board of directors.

As mentioned above, the proposed rule requires a covered company's CRO to report to the company's risk committee. To ensure that a covered company's risk committee appropriately considers and evaluates the information it obtains from the CRO, the proposed rule would direct a covered company's risk committee to receive and review regular reports from the covered company's CRO.

Request for Comment

The Board requests comment on all aspects of this proposal.

VII. Stress Test Requirements

A. Background

As part of the effort during the recent crisis to stabilize the U.S. financial system, the Federal Reserve began stress testing large, complex bank holding companies as a forward-looking exercise designed to estimate losses, revenues, allowance for loan losses and capital needs under various economic and financial market scenarios. In early 2009, the Federal Reserve led the Supervisory Capital Assessment Program (SCAP) as a key element of the plan to stabilize the U.S. financial system. By looking at the broad capital needs of the financial system and the specific needs of individual companies, these stress tests provided valuable information to market participants and had an overall stabilizing effect.

Building on SCAP and other supervisory work coming out of the crisis, the Federal Reserve initiated the annual Comprehensive Capital Analysis and Review (CCAR) in late 2010 to assess the capital adequacy and evaluate the internal capital planning processes of large, complex bank holding companies. The CCAR represents a substantial strengthening of previous approaches to assessing capital adequacy and aiming to ensure that large organizations have thorough and robust processes for managing and allocating their capital resources. The CCAR also focuses on the risk measurement and management practices supporting organizations' capital adequacy assessments, including their ability to deliver credible inputs to their loss estimation techniques.

Building on the SCAP and CCAR, the Board proposes to implement section 165(i)(1) of the Dodd-Frank Act, which requires the Board to conduct annual analyses of the financial condition of covered companies to evaluate the potential effect of adverse economic and financial market conditions on the capital of these companies (supervisory stress tests). The Board also proposes to implement section 165(i)(2) of the Act, which requires the Board to issue regulations that (i) require financial companies with total consolidated assets of more than $10 billion and for which the Board is the primary federal financial regulatory agency to conduct stress tests on an annual basis, and (ii) require covered companies to conduct semi-annual stress tests (together company-run stress tests).

The supervisory stress tests involve the Board's analyses of the capital of each covered company, on a total consolidated basis, and an evaluation of the ability of the covered company to absorb losses as a result of adverse economic and financial conditions. The Act requires the Board to provide for at least three different possible sets of conditions—baseline, adverse, and severely adverse conditions—under which the Board would conduct this evaluation.[166] The Act also requires the Board to publish a summary of the supervisory stress test results.[167]

For the company-run stress tests, the Act requires that the Board issue regulations that: (i) Define the term ''stress test'' for purposes of the regulations; (ii) establish methodologies for the conduct of the company-run stress tests that provide for at least three different sets of conditions, including baseline, adverse, and severely adverse conditions; (iii) establish the form and content of a required report on the company-run stress tests that companies subject to the regulation must submit to the Board; and (iv) require subject companies to publish a summary of the results of the required stress tests.[168]

[166] *See* 12 U.S.C. 5365(i)(1).

[167] *Id.*

[168] *See* 12 U.S.C. 5365(i)(2).

B. Overview of the Proposed Rule

1. Annual Supervisory Stress Tests Conducted by the Board

a. Purpose

The Board has long held the view that bank holding companies generally should operate with capital positions well above the minimum regulatory capital ratios, with an amount of capital that is commensurate with each bank holding company's risk profile.[169] Bank holding companies should have internal processes for assessing their capital adequacy that reflect a full understanding of the risks associated with all aspects of their operations and ensure that they hold capital commensurate with those risks.[170] Stress testing is one tool that helps both supervisors and supervised companies ensure that there is adequate capital through periods of stress.

The stress testing requirements described below are designed to work in tandem with the Board's capital plan rule[171] to allow the Federal Reserve and covered companies to better understand the full range of their risks and the potential impact of stressful events and circumstances on their overall capital adequacy and financial condition. The Board and the other federal banking agencies previously have highlighted the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures.[172] The 2007–2009 financial crisis further underscored the need for banking organizations to incorporate stress testing into their risk management, as banking organizations that are unprepared for stressful events and circumstances are more vulnerable to acute threats to their financial condition and viability.[173]

The supervisory stress tests would provide supervisors with forward-looking information to help them identify downside risks and the potential impact of adverse outcomes on capital adequacy at covered companies. Supervisory stress tests would also provide a means to assess capital adequacy across companies more fully and support the Board's financial stability efforts. In addition, the publication of summary results from supervisory stress tests would enhance public disclosure of information about covered companies' financial condition and the ability of those companies to absorb losses as a result of adverse economic and financial conditions. Inputs from the supervisory stress tests, along with the results of any company-run stress tests, would be used by the Federal Reserve in its supervisory evaluation of a covered company's capital plan.

TABLE 1—PROCESS OVERVIEW OF ANNUAL SUPERVISORY STRESS TEST AND CAPITAL PLAN CYCLE

Supervisory stress test steps	Capital plan steps	Proposed timeframe
Regulatory reports submitted (using data as of Sept. 30 and other required information).		By Mid-November.
	Capital plan submitted (including individual results of company-run stress tests).	By January 5.
Board communicates results to each covered company		By early March.
	Federal Reserve response to capital plan	By March 31.
Board publishes summary results of the supervisory stress test.		By Mid-April.

The design of the supervisory stress tests focuses on determining post-stress capital positions at covered companies to inform assessments of capital adequacy. Because the Board's supervisory stress tests would be standardized across covered companies and not adjusted for each company, they are not expected to fully capture all potential risks that may affect a specific company's capital position. Supervisory stress tests are one of several supervisory assessment tools, accordingly, a full assessment of a company's capital adequacy should be informed by a broad range of information including a covered company's internal capital adequacy processes and the results of its own internal stress tests. In particular, a full assessment of a company's capital adequacy must take into account a range of factors, including idiosyncratic aspects of individual companies that a standardized supervisory stress test applicable across companies cannot be expected to cover as sufficiently as the companies' internal stress testing practices. Idiosyncratic factors would include evaluation of a company's internal stress testing results, its capital planning processes, the governance over those processes, regulatory capital measures, and market assessments. As the parties primarily responsible for the financial condition of a covered company, its board of directors and senior management bear the primary responsibility for developing, implementing, and monitoring a covered company's capital planning strategies and internal capital adequacy processes and are in the best position to oversee these processes. Thus, along with the results of a covered company's capital plan, any company-run stress tests, and other supervisory information, the Board would use the results of the supervisory stress tests as one factor in the overall supervisory assessment of a covered company's capital adequacy.[174]

[169] *See* 12 CFR part 225, appendix A; *see also* Supervision and Regulation Letter SR 99–18 (July 1, 1999), *available at http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.htm* (hereinafter SR 99–18).

[170] *See* Supervision and Regulation Letter SR 09–4 (revised March 27, 2009), *available at http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm* (hereinafter SR 09–4).

[171] *See* 12 CFR 225.8.

[172] *See, e.g.,* 76 FR 35072 (June 15, 2011); Supervision and Regulation Letter SR 10–6, *Interagency Policy Statement on Funding and Liquidity Risk Management* (March 17, 2010), *available at http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm;* Supervision and Regulation Letter SR 10–1, *Interagency Advisory on Interest Rate Risk* (January 11, 2010), *available at http://www.federalreserve.gov/boarddocs/srletters/2010/sr1001.htm;* SR 09–4, *supra* note 170; Supervision and Regulation Letter SR 07–1, *Interagency Guidance on Concentrations in Commercial Real Estate* (January 4, 2007), *available at http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* SR 99–18, *supra* note 169; *Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework,* 73 FR 44620 (July 31, 2008); *SCAP Overview of Results, supra* note 111; and *Comprehensive Capital Analysis and Review: Objectives and Overview* (March 18, 2011), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf.*

[173] *See* Basel Committee on Banking Supervision, *Principles for Sound Stress Testing Practices and Supervision* (May 2009), *available at http://www.bis.org/publ/bcbs155.htm.*

[174] The Board notes that the design of the supervisory stress tests focuses on capital adequacy and does not focus on all aspects of financial condition.

b. Applicability

Except as otherwise provided in the proposed rule, a bank holding company that becomes a covered company no less than 90 days before September 30 of a calendar year must comply with the requirements of the proposed rule regarding stress tests, including the timing of required submissions to the Board, from that September 30 forward. With respect to initial applicability, a bank holding company that is a covered company on the effective date of the proposed rule must comply with the proposed requirements as of the effective date of the rule, including the timing of required submissions to the Board. A company that the Council designates for supervision by the Board on a date 180 days before September 30 of a calendar year must comply with the requirements of the proposed rule regarding stress tests, including the timing of required submissions to the Board, from that September 30 forward.

Question 70: Are the timing requirements of this proposal sufficient to allow a covered company or nonbank covered company to prepare, collect, and submit to the Board the information necessary to support the supervisory stress test? If not, what alternative timing should the Board consider?

c. Process Overview of Annual Supervisory Stress Test Cycle

The Board expects to use the following general process and timetables in connection with the supervisory stress tests.

i. Information Collection From Covered Companies

For a supervisory stress test conducted within any given calendar year, covered companies would be required to submit to the Board data and other information to support the conduct of that year's tests. To the greatest extent possible, the data schedules, and any other data requests, would be designed to minimize burden on the covered company and to avoid duplication, particularly in light of other reporting requirements that may be imposed by the Board. The Board envisions collecting the requisite information from covered companies primarily through the regulatory reporting process, and these reports may change from time to time. The confidentiality of any information submitted to the Board for the supervisory stress tests will be determined in accordance with the Board's rules regarding availability of information.[175] As discussed below in section e.iv., the Board proposes to publish a summary of the results the supervisory stress test, as required by the Dodd-Frank Act.[176] The Board may obtain supplemental information, as needed, through the supervisory process. The Board plans to publish for notice and comment any new or revised data requirements and related reporting instructions in a separate information collection proposal.[177]

Question 71: What is the potential burden on covered companies stemming from the requirements to submit internal data to support the supervisory stress tests?

ii. Publication of Scenarios and Methodologies

The Board plans to publish the scenarios in advance of conducting the annual stress tests. The Board also plans to publish an overview of its related stress testing methodologies.

iii. Conducting Stress Tests

The Board intends to conduct the supervisory stress tests using data collected from covered companies as well as supplemental information. In the course of conducting the stress tests, the Board intends to consult with covered companies as necessary throughout the process, particularly if the company's data submissions or other information provided are unclear or the supervisory stress test raises questions more generally. After conducting its analyses, the Board plans to communicate to each covered company the results within a reasonable period of time.

iv. Publishing Results

Subsequent to communicating results of the analyses to each covered company, the Board would publish a summary of the supervisory stress test results, as discussed further below.

v. Proposed Steps for Annual and Additional Stress Tests

Table 2 describes proposed steps in the Board's annual supervisory stress test cycle, including proposed general timeframes for each step. The Board devised this proposed process in conjunction with the proposed process outlined below for the company-run stress tests, given the overlap in applicability for certain companies. As noted above, the timeline is also intended to facilitate the use of supervisory stress tests to inform the Board's analysis of companies' capital plan submissions under the annual CCAR process, where applicable. The proposed timeframes are illustrative and are subject to change.

TABLE 2—PROCESS OVERVIEW OF ANNUAL SUPERVISORY STRESS TESTING CYCLE

[Using data collected as of September 30, except for trading and counterparty data, for a planning horizon of at least nine calendar quarters]

Step	Proposed timeframe
1. Board publishes scenarios for upcoming annual cycle	No later than mid-November.
2. Covered companies submit regulatory reports and any other required information	By mid-November.
3. Board completes supervisory stress tests and compiles results	By mid-February.

[175] *See generally* 12 CFR part 261; *see also* 5 U.S.C. 552(b).

[176] 12 U.S.C. 5365(i)(1)(B)(v).

[177] To minimize burden on covered companies, the Board plans to leverage, to the extent possible, any pre-existing data collections that are relevant for the proposed rule's stress testing purposes (for example, see the proposed agency information collection available at *http://www.federalreserve.gov/reportforms/formsreview/FRY14Q_FRY14A_20110907_ifr.pdf*).

TABLE 2—PROCESS OVERVIEW OF ANNUAL SUPERVISORY STRESS TESTING CYCLE—Continued

[Using data collected as of September 30, except for trading and counterparty data, for a planning horizon of at least nine calendar quarters]

Step	Proposed timeframe
4. Board communicates individual company results to covered companies	By early March.
5. Board publishes a summary of the supervisory stress test results	By early April.

d. General Approach to Supervisory Stress Tests

The Board anticipates that its framework for conducting its annual stress test of covered companies would assess the impact of different economic and financial market scenarios on the consolidated capital of each covered company over a forward-looking planning horizon, taking into account all relevant exposures and activities of that company. The proposed rule defines the planning horizon as the period of time over which the supervisory stress test projections would extend, specifically at least nine quarters. The key feature of this framework would be an estimate of projected net income and other factors affecting capital in each quarter of the stress test planning horizon, leading to an estimate of how each covered company's capital resources would be affected under the scenarios. The primary outputs produced under the framework would be pro forma projections of capital positions (including capital levels and regulatory and other capital ratios) for each quarter-end over the planning horizon.

i. Scenarios

Under the proposed rule, prior to conducting the analyses of covered companies, the Board would publish a minimum of three different sets of economic and financial conditions, including baseline, adverse, and severely adverse conditions (''scenarios''), under which the Board would conduct its annual analyses. As discussed above, the Board would update, make additions to, or otherwise revise these scenarios as appropriate, and would publish any such changes to the scenarios in advance of conducting each year's analyses. The Board expects that the stress test framework would produce at least three sets of projections using quarterly intervals over the planning horizon based upon the scenarios specified by the Board. The Board envisions that the scenarios would consist of future paths of a series of economic and financial variables over the stress test planning horizon, including projections for a range of macroeconomic and financial indicators, such as real GDP, the unemployment rate, equity and property prices, and various other key financial variables. The Board recognizes that certain trading positions and trading-related exposures are highly sensitive to adverse market events, potentially leading to large short-term volatility in covered companies' earnings. As a result, to address these scenarios, the Board would supplement the scenarios in some cases with market price and rate ''shocks'' that are consistent with historical or other adverse market events specified by the Board. The scenarios, in some cases, may also include stress factors that may not be directly correlated to macroeconomic or financial assumptions but nevertheless can materially affect covered companies' risks, such as factors that affect operational risks.

Each year, the scenarios specified by the Board would reflect changes in the outlook for economic and financial conditions. In general, the baseline scenario would consider the most recently available views of the macroeconomic outlook expressed by government agencies, other public-sector organizations, and private-sector forecasters as of the beginning of the annual stress-test cycle. The adverse scenario could include economic and financial conditions consistent with a recession of at least moderate intensity, including a shortfall of economic activity and increase in unemployment relative to the baseline scenario, weakness in household incomes, declines in asset prices (including equities, corporate bonds, and property prices) and changes in short- and long-term yields on government bonds. The severely adverse scenario would consist of economic and financial conditions that are more unfavorable than those of the adverse scenario and that also include, in some instances, salient factors that are likely to place notable strains on at least some lines of business. For example, such severely adverse conditions could include precipitous declines in property or other asset prices; shifts in the shape of the yield curve; marked changes in the propensity of households or firms to enter bankruptcy; or strains on households, businesses, or real property markets in particular regions of the United States.

ii. Data and Information Requirements of Covered Companies

The Board's stress test framework would rely on consolidated data and other information supplied by each covered company. The proposed rule would require each covered company to provide data and information to the Board, generally no later than 40 days after the end of each calendar quarter, although some items may need to be collected only on an annual basis and others may need to be collected on a monthly basis. For data related to trading and counterparty exposures, the Board expects to communicate the as-of date for those exposures during the fourth quarter of each year. Covered companies would need to provide such data and other information in the manner and form prescribed by the Board to enable the Board to estimate net income, losses, and pro-forma capital levels and ratios for those companies over the planning horizon under baseline, adverse, and severely adverse scenarios (or other such conditions as determined appropriate by the Board). This data would include information:

(i) Related to the covered company's on- and off-balance sheet exposures, including in some cases information on individual items (such as loans and securities) held by the company, and including exposures in the covered company's trading portfolio, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions in the trading portfolio—including counterparty credit exposures—to changes in market prices and interest rates;

(ii) To assist the Board in estimating the sensitivity of the covered company's revenues and expenses to changes in economic and financial conditions; and

(iii) To assist the Board in estimating the likely evolution of the covered company's balance sheet (such as the composition of its loan and securities portfolios) and allowance for loan losses, in response to changes in

economic and financial conditions in each of the scenarios provided.

As noted above, the Board plans to issue a separate information collection proposal to support its annual supervisory stress test analyses.[178] The specific data requirements would be outlined in that proposal and the Board would publish any updates to its information requirements in a manner that provides covered companies with sufficient lead time to implement the changes. In addition, under the proposed rule, the Board may require a covered company to submit any other information the Board deems necessary in order to: (i) Ensure that the Board has sufficient information to conduct its analysis; and (ii) derive robust projections of a company's losses, pre-provision net revenues, allowance for loan losses, and future pro forma capital positions under the baseline, adverse, and severely adverse scenarios (or other such conditions as determined appropriate by the Board). The confidentiality of any information submitted to the Board for the supervisory stress tests will be determined in accordance with the Board's rules regarding availability of information.[179] As discussed below in section e.iv., the Board proposes to publish a summary of the results of the supervisory stress test, as required by the Dodd-Frank Act.[180]

iii. Methodology for Estimating Losses and Revenues

While the Board expects to publish an overview of its methodology for the supervisory stress tests, the Board believes it is useful to provide, as part of this proposal, a general overview of the anticipated methodology in advance of that publication. The Board would calculate each covered company's projected losses, revenues, and other factors affecting capital using a series of models and estimation techniques that relate the economic and financial variables in the baseline, adverse, and severely adverse scenarios to the company's losses and revenues. The Board would develop a series of models to estimate losses on various types of loans and securities held by the covered company, using data submitted by that company. These models may be adjusted over time. The Board would use a separate methodology or a combination of methodologies—potentially including covered companies' internal models, if appropriate—to estimate projected losses related to covered companies' trading portfolio or counterparty credit-risk exposures in the event of an adverse market shock, taking into account the complexity and idiosyncrasy of each covered company's positions. The framework may also incorporate an approach to estimate potential losses from stress factors specifically affecting the covered companies' other risks. Finally, the framework would include a set of methodologies to assess the impact of losses, pre-provision net revenue, allowance for loan losses, and other factors on future pro forma capital levels and ratios.

Another element of the framework would be a set of models or rules to describe how a covered company's balance sheet would change over time, as well as a set of assumptions or models for other actions or decisions by the covered company that affect capital, such as its provisioning, dividend, and share repurchase policy. Information about planned future acquisitions and divestitures by the companies would also be incorporated. These projections would then be analyzed to assess their combined impact on the company's capital positions, including projected capital levels and capital ratios, at the end of each quarter in the planning horizon. The framework would thus incorporate all minimum regulatory capital requirements, including all appropriate limits and deductions. These projections used in the supervisory stress tests also would incorporate, as appropriate, any significant changes in or the significant effects of accounting requirements during the planning period.

Question 72: What alternative models or methodologies for estimating a covered company's losses and revenues should the Board consider?

e. Results of Annual Analyses

i. Description of Supervisory Assessment

The Board, through its annual analyses, would evaluate each covered company as to whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses under economic and financial market conditions as contained in the designated scenarios. This evaluation would include, but would not be limited to, a review of the covered company's estimated losses, pre-provision net revenue, allowance for loan losses, and the extent of their impact on the company's capital levels and ratios, including regulatory capital ratios.

ii. Communication of Results to Covered Companies

The Board notes that, under the Dodd-Frank Act, it is required to publish a summary of the results of its annual analyses.[181] Under the proposed rule, prior to publishing a summary of the results of its annual analyses, the Board would convey to each covered company the results of the Board's analyses of that company and explain to the firms information that the Board expects to make public.

iii. Post-Assessment Actions by Covered Companies

As a general matter, under the proposed rule, subsequent to receiving the results of the Board's annual analyses, each covered company must take the results of the analysis conducted by the Board under the proposed rule into account in making changes, as appropriate, to the company's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans of the company for recovery; and for improving overall risk management. In addition, each covered company must make such updates to its resolution plan (required to be submitted annually to the Board pursuant to the Board's Regulation QQ (12 CFR part 243)) as the Board, based on the results of its analyses of the company under this subpart, determines appropriate within 90 days of the Board publishing the results of its analyses. Additionally, each covered company that is subject to the requirement to submit a capital plan to the Board under section 225.8 of the Board's Regulation Y (12 CFR 225.8) would be required to consider the results of the analysis of the company conducted by the Board under the proposed rule when updating its capital plan. Stress testing results may also result in the application of early remediation requirements as described further below.

iv. Publication of Results by the Board

Under the proposed rule, within a reasonable period of time after completing the annual analyses of covered companies (but no later than mid-April of a calendar year), the Board would publish a summary of the results of such analyses. The Board emphasizes that there are certain factors to bear in mind when interpreting any published

[178] To the greatest extent possible, the data templates, and any other data requests, would be designed to minimize burden on the bank holding company and to avoid duplication, particularly in light of potential new reporting requirements arising from the Dodd-Frank Act.

[179] *See generally* 12 CFR part 261; *see also* 5 U.S.C. 552(b).

[180] 12 U.S.C. 5365(i)(1)(B)(v).

[181] 12 U.S.C. 5365(i)(1)(B)(v).

results from the Board's annual analyses under the proposed rule. For example, the outputs of the analyses might not align with those produced by other parties conducting similar exercises, even if a similar set of assumptions were used. In addition, the outputs under the adverse and severely adverse scenarios should not be viewed as most likely forecasts or expected outcomes or as a measure of any covered company's solvency. Instead, those outputs are the resultant estimates from forward-looking exercises that consider possible outcomes based on a set of different hypothetical scenarios.

The Board proposes to publish a high-level summary of supervisory stress test results for each covered company, i.e., company-specific results. This will support one of the key objectives of the supervisory stress tests, namely to enhance transparency of covered companies' risks and financial condition and its ability to absorb loss as a result of adverse economic and financial conditions. The annual set of published results for each company for each quarter-end over the specified planning horizon is expected to include:

- Estimated losses, including overall losses on loans by subportfolio, available-for-sale and held-to-maturity securities, trading portfolios, and counterparty exposures;
- Estimated pre-provision net revenue;
- Estimated allowance for loan losses;
- Estimated pro forma regulatory and other capital ratios.

The Board recognizes that there are important considerations related to disclosure of such information that must be taken into account with respect to publishing company-specific results from supervisory stress tests, and has carefully analyzed the issues surrounding public disclosure of such results in formulating this proposal. The Board requests comment on its proposal to publish company-specific results.

Question 73: What are the benefits and drawbacks associated with company-specific disclosures? What, if any, company-specific items relating to the supervisory stress tests would present challenges or raise issues if disclosed, and what is the nature of those challenges or issues? What specific concerns about the possible release of a company's proprietary information exist? What alternatives to the company-specific disclosures being proposed should the Board consider?

2. Annual and Additional Stress Tests Conducted by the Companies

a. Purpose

The Board views the company-run stress tests under the proposed rule as having a shared purpose with the supervisory stress tests. The company-run stress tests would provide forward-looking information to supervisors to assist in their overall assessments of a company's capital adequacy, help to better identify downside risks and the potential impact of adverse outcomes on the company's capital adequacy, and assist in achieving the financial stability goals of the Dodd-Frank Act. Further, the company-run stress tests are expected to improve companies' stress testing practices with respect to their own internal assessments of capital adequacy and overall capital planning.

The proposed rule would apply to two sets of companies: covered companies and over $10 billion companies, as defined below. Covered companies would be required to conduct semi-annual company-run stress tests and over $10 billion companies would be required to conduct annual company-run stress tests.

For purposes of the company-run stress tests, the proposed rule defines a stress test as a process to assess the potential impact on a covered company or an over $10 billion company of economic and financial conditions (scenarios) on the consolidated earnings, losses and capital of the company over a set planning horizon, taking into account the current condition of the company and the company's risks, exposures, business strategies, and activities.

The Board expects that the company-run stress tests required under the proposed rule would be one component of the broader stress testing activities conducted by covered companies and over $10 billion companies. The broader stress testing activities should address the impact of a broad range of potentially adverse outcomes across a wide set of risk types beyond capital adequacy, affecting other aspects of a company's financial condition (e.g., liquidity risk). In addition, a full assessment of a company's capital adequacy must take into account a range of factors, including evaluation of its capital planning processes, the governance over those processes, regulatory capital measures, results of supervisory stress tests where applicable, and market assessments, among others. The Board notes that the company-run stress tests described in this proposed rule focus on capital adequacy and do not focus on other aspects of financial condition.

b. Applicability

i. General

The proposed rule would apply to covered companies and over $10 billion companies. Over $10 billion companies are defined as any bank holding company (other than a bank holding company that is a covered company), any state member bank, or any savings and loan holding company that (i) has more than $10 billion in total consolidated assets, as determined based on the average of the total consolidated assets as reported on the bank holding company's four most recent FR Y–9C reports, the state member bank's four most recent Consolidated Report of Condition and Income (Call Report), or the savings and loan holding company's four most recent relevant quarterly regulatory reports; and (ii) since becoming an over $10 billion company, has not had $10 billion or less in total consolidated assets for four consecutive calendar quarters as reported on the bank holding company's four most recent FR Y–9C reports, the state member bank's four most recent Call Reports, or the savings and loan holding company's four most recent relevant quarterly regulatory reports.[182] This calculation will be effective as of the due date of the company's most recent regulatory report.

c. Process Overview

Except as otherwise provided in the proposed rule, a bank holding company that becomes a covered company or a bank holding company, savings and loan holding company (subject to the delayed effective date for savings and loan holding companies) or state member bank that becomes an over $10 billion company no less than 90 days before September 30 of a calendar year must comply with the requirements, including the timing of required submissions to the Board, of the proposed rule from September 30 forward. In addition, except as otherwise provided in the rule, a bank holding company that becomes a covered company no less than 90 days before March 31 of a calendar year must

[182] Under section 165(i)(2), the requirements to conduct annual stress tests apply to any financial company with more than $10 billion in total consolidated assets and that is regulated by a primary federal financial regulatory agency. 12 U.S.C. 5365(i)(2). The Dodd-Frank Act defines primary financial regulatory agency in section 2 of the Act. *See* 12 U.S.C. 5301(12). The Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation have consulted on rules implementing section 165(i)(2).

comply with the requirements, including timing of required submissions to the Board, of the proposed rule from March 31 forward.

A company that the Council has determined shall be supervised by the Board on a date no less than 180 days before September 30 of a calendar year must comply with the requirements of this subpart, including timing of required submissions, from September 30 of that calendar year and thereafter. Further, a company that the Council has determined shall be supervised by the Board on a date no less than 180 days before March 31 of a calendar year must comply with the requirements of this subpart, including timing of the required submissions from March 31 of that calendar year and thereafter.

With respect to initial applicability, a bank holding company that is a covered company or a bank holding company or state member bank that is an over $10 billion company on the effective date of the proposed rule would be subject to the proposed requirements as of the effective date, including timing of required submissions to the Board. Also with respect to initial applicability, a savings loan and holding company that is an over $10 billion company on or after the effective date of the rule would not be subject to the proposed requirements, including timing of required submissions to the Board, until savings and loan holding companies are subject to minimum risk-based capital and leverage requirements.

The Board expects to use the following general process and timetables in connection with the company-run stress tests.

i. Reporting by Companies

Under this proposal, the Board would collect the covered companies' and over $10 billion companies' stress test results and additional qualitative and quantitative information about the tests on a confidential basis and may require companies to provide other information on a supplemental basis. The Board plans to publish for comment both specific requirements for the report to be submitted to the Board, as described below, and related instructions in a separate information collection proposal before requiring companies to perform the company-run stress tests that would be required under the proposed rule.

Following the stress test, each covered company and each over $10 billion company would be required to publish a summary of its results as described further below.

ii. Annual Company-Run Stress Test

Each year, in advance of the annual company-run stress test required of all covered companies and over $10 billion companies on a schedule to be established, the Board would provide to such companies at least three scenarios, including baseline, adverse, and severely adverse, that each covered company and each over $10 billion company must use to conduct its annual stress test required under the proposed rule. The Board expects that these will be the same scenarios published for use in supervisory stress tests also required by the Act.

iii. Additional Company-Run Stress Test Cycle for Covered Companies

Within a given year, covered companies (but not over $10 billion companies) would be required to conduct one company-run stress test in addition to the annual stress test described above. For this additional company-run test, each covered company would be required to develop and employ scenarios reflecting a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios, and such additional conditions as the Board determines appropriate.

iv. Proposed Steps for Annual and Additional Company-Run Stress Tests

Table 3 below describes proposed steps for the company-run stress test cycle for covered companies and over $10 billion companies, including proposed general timeframes for each step. The proposed timeframes are illustrative and are subject to change.

TABLE 3—PROCESS OVERVIEW OF ANNUAL AND ADDITIONAL COMPANY-RUN STRESS TEST CYCLES

[With annual test using data as of September 30 and additional test using data as of March 31]

Step	Proposed timeframe
Annual company-run stress test cycle for all covered companies and over $10 billion companies	
1. Board provides covered companies and over $10 billion companies with scenarios for annual stress tests	No later than mid-November.
2. Covered companies and over $10 billion companies submit required regulatory report to the Board on their stress tests.	By January 5.
3. Covered companies and over $10 billion companies make required public disclosures	By early April.
Additional company-run stress test cycle for covered companies	
4. Covered companies submit required regulatory report to the Board on their additional stress tests	By July 5.
5. Covered companies make required public disclosures	By early October.

d. Overview of Stress Test Requirements

i. General Requirements for Company-Run Stress Tests

Under the proposed rule, each covered company and each over $10 billion company would be required to conduct annual stress tests using the company's financial data as of September 30 of that year, with the exception of trading and counterparty exposures, to assess the potential impact of different scenarios on the consolidated earnings and capital of that company and certain related items over at least a nine-quarter forward-looking planning horizon taking into account all relevant exposures and activities.[183] The Board would communicate the required as of date for data related to trading and counterparty exposures of a company during the fourth quarter of each calendar year. Each covered company would also be required to conduct an additional stress test using the company's financial data as of March 31 of that year.

The Board recognizes that certain parent company structures of covered companies and over $10 billion companies may include one or more subsidiary banks, each with total consolidated assets greater than $10 billion. The company-run stress test requirements of Section 165(i)(2) would apply to the parent company and to each subsidiary regulated by a primary federal financial regulatory agency that

[183] The Board expects to communicate the as-of date for data on trading and counterparty exposures sometime in the fourth quarter of each year.

has more than $10 billion in total consolidated assets. To minimize any undue burden associated with multiple entities within one parent structure having to meet the proposed rule's requirements, the Board intends to coordinate with the other federal financial regulatory agencies, as appropriate. For example, the Board would aim to coordinate with the other federal financial regulatory agencies in providing scenarios to be used by multiple entities within a holding company structure when meeting the requirements of the annual stress tests described in the proposed rule.

ii. Scenarios

The proposed rule would require each covered company and each over $10 billion company to use a minimum of three sets of economic and financial conditions (scenarios), including baseline, adverse, and severely adverse conditions, or such additional conditions as the Board determines appropriate.

(1) Annual Company-Run Stress Tests

In advance of the annual stress tests, the Board would provide at least three scenarios (baseline, adverse, and severely adverse) that all covered companies and over $10 billion companies would be required to use to conduct the stress tests required under the proposed rule. These scenarios would be expected to be the same as the scenarios used by the Board in conducting the supervisory stress tests.

(2) Additional Company-Run Stress Tests for Covered Companies

The Board would not provide scenarios to covered companies for the additional company-run stress tests. Rather, for the additional stress test, a covered company would be required to develop and employ its own scenarios reflecting a minimum of three sets of economic and financial conditions—baseline, adverse, and severely adverse conditions—or such additional conditions as the Board determines appropriate.

iii. Methodologies and Practices

Under the proposed rule, each covered company and each over $10 billion company would be required to use the applicable scenarios discussed above in conducting its stress tests to calculate, for each quarter-end within the planning horizon, potential losses, pre-provision revenues, allowance for loan losses, and future pro forma capital positions over the planning horizon, including the impact on capital levels and ratios. Each covered company and over $10 billion company would also be required to calculate, for each quarter-end within the planning horizon, the potential impact of the specific scenarios on its capital ratios, including regulatory and any other capital ratios specified by the Board.

The proposed rule would require each covered company and over $10 billion company to establish and maintain a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress testing processes used by the company are effective in meeting the requirements of the proposed rule. The company's policies and procedures must, at a minimum, outline the company's stress testing practices and methodologies, validation, use of stress test results and processes for updating the company's stress testing practices consistent with relevant supervisory guidance. Each covered company would also need to include in its policies information describing its processes for scenario development for the additional stress test required under the proposed rule. The board of directors and senior management of each covered company and each over $10 billion company must approve and annually review the controls, oversight, and documentation, including policies and procedures, of the company established pursuant to the proposed rule.

iv. Stress Test Information and Results

1. Required Report to the Board of Stress Test Results and Related Information

On or before January 5 each year, each covered company and each over $10 billion company would be required to report to the Board, in the manner and form prescribed in the proposed rule, the results of the stress tests conducted by the company. To the extent possible and where relevant, a covered company would be able to refer to information submitted in connection with capital plan rule requirements when submitting the report required under this rule. The Board plans to publish for comment a description of items to be included in the required report to the Board. The Board anticipates that the report would include (but not necessarily be limited to) the following qualitative and quantitative information.

Qualitative information:

- A general description of the use of stress tests required by the proposed rule in the company's capital planning and capital adequacy assessments;
- A description of the types of risks (e.g., credit, market, operational, etc.) being captured in the stress test;
- A general description of the methodologies employed to estimate losses, pre-provision net revenues, allowance for loan losses, changes in capital levels and ratios, and changes in the company's balance sheet over the planning horizon;
- Assumptions about potential capital distributions over the planning horizon;
- For covered companies subject to additional stress tests, a description of scenarios developed by the company for its additional test, including key variables used; and
- Any other relevant qualitative information to facilitate supervisory assessment of the tests, upon request by the Board.

Quantitative information under each scenario:

- Estimated pro forma capital levels and capital ratios, including regulatory and any other capital ratios specified by the Board;
- Estimated losses by exposure category;
- Estimated pre-provision net revenue;
- Estimated allowance for loan losses;
- Estimated total assets and risk-weighted assets;
- Estimated aggregate loan balances;
- Potential capital distributions over the planning horizon; and
- Any other relevant quantitative information to facilitate supervisory understanding of the tests, upon request by the Board.

A covered company subject to an additional stress test would also be required to report to the Board the results of its additional test on or before July 5 each year, in a manner similar to its report required for its annual stress test. The Board may also request supplemental information as needed. Under the Dodd-Frank Act, companies are required to publish a summary of their stress test results (*see* discussion in section 3. below).[184]

2. Supervisory Review of Companies' Stress Test Processes and Results

Based on information submitted by a covered company or an over $10 billion company in the required report to the Board described above as well as other relevant information, the Board would conduct an analysis of the quality of the company's stress tests processes and related results. The Board envisions that feedback about such analysis would be provided to a company through the supervisory process. In addition, each covered company and each over $10 billion company would be required to take the results of the annual stress test (or additional stress tests in the case of a covered company), in conjunction

[184] 12 U.S.C. 5365(i)(2)(C)(iv).

with the Board's analyses of those results, into account in making changes, as appropriate, to the company's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans of the company for recovery and resolution; and to improve the overall risk management of the company. Additionally, each covered company would be required to consider the results of its company-run stress tests in developing and updating its capital plan. The Board may also require other actions consistent with safety and soundness of the company.

3. Publication of Results by the Company

Consistent with the requirements of the Act, the proposed rule would require each covered company and each over $10 billion company to publish a summary of the results of its annual company-run stress tests within 90 days of submitting its required report to the Board. A covered company subject to the additional stress test would also be required to publish a summary of the results of its additional test within 90 days of submitting its required report to the Board for that test. The summary may be published on a covered company's or an over $10 billion company's Web site or in any other forum that is reasonably accessible to the public; further, it is expected that an over $10 billion company that is a subsidiary of another covered company or another over $10 billion company could publish its summary on the parent company's Web site or in another form along with the parent company's summary. The required information publicly disclosed by each covered company and each over $10 billion company, as applicable, would, at a minimum, include:

(i) A description of the types of risks being included in the stress test;

(ii) For each covered company, a high-level description of scenarios developed by the company for its additional stress test, including key variables used (such as GDP, unemployment rate, housing prices);

(iii) A general description of the methodologies employed to estimate losses, revenues, allowance for loan losses, and changes in capital positions over the planning horizon;

(iv) Aggregate losses, pre-provision net revenue, allowance for loan losses, net income, and pro forma capital levels and capital ratios (including regulatory and any other capital ratios specified by the Board) over the planning horizon under each scenario;

Question 74: What alternative to the public disclosure requirements of the proposed rule should the Board consider? What are the potential consequences of the proposed public disclosures of the company-run stress test results?

C. Request for Comments

The Board requests comment on all aspects of the proposed rule for the annual and additional company-run stress testing cycles.

Question 75: Is the proposed timing of stress testing appropriate, and why? If not, what alternatives would be more appropriate? What, if any, specific challenges exist with respect to the proposed steps and timeframes? What specific alternatives exist to address these challenges that still allow the Board to meet its statutory requirements? Please comment on the use of the ''as of'' date of September 30 (and March 31 for additional stress tests), the January 5 reporting date (and July 5 for additional stress test) the publication date, and the sufficiency of time for completion of the stress tests.

Question 76: Does the immediate effectiveness of the proposed rule provide sufficient time for an institution that is covered at the effective date of the rule to conduct its first annual stress test? Would over $10 billion companies, in particular, have sufficient time to prepare for the first annual stress test, under either the proposed initial or proposed ongoing applicability rules?

VIII. Debt-to-Equity Limits for Certain Covered Companies

A. Background

Section 165(j) provides that the Board must require a covered company to maintain a debt-to-equity ratio of no more than 15-to-1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the Unites States.[185] The Act requires that, in making its determination, the Council must take into consideration the criteria in Dodd-Frank Act sections 113(a) and (b). These criteria include, among other things, the extent of the leverage of the company, the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company, and the importance of the company as a source of credit for U. S. households, businesses, and State and local governments and as a source of liquidity for the U.S. financial system. The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).[186]

The Board seeks comment on this proposed rule that would establish procedures to notify a covered company that the Council has made a determination under section 165(j) that the company must comply with the 15-to-1 debt-to-equity ratio requirement (identified company), as well as procedures for terminating the requirement. The proposed rule also defines the components of the debt-to-equity requirement and establishes a time period of 180 days for an identified company to comply with the debt-to-equity ratio requirement, and provides that the time for compliance may be extended if an extension would be in the public interest.

B. Overview of the Proposed Rule

The debt-to-equity limitation in section 165(j) applies to any covered company where the Council makes two findings: (i) That the covered company poses a grave threat to the financial stability of the United States; and (ii) that the imposition of the specified debt-to-equity requirement is necessary to mitigate that systemic risk. Under the proposal, ''debt'' and ''equity'' would have the same meaning as ''total liabilities'' and ''total equity capital'' respectively, as calculated in an identified company's reports of financial condition. The 15-to-1 debt-to-equity would be calculated as the ratio of total liabilities to total equity capital minus goodwill.

Section 252.152(a) provides for notice to the identified company and establishes the maximum debt-to-equity ratio requirement for an identified company. An identified company would receive written notice from the Board that the Council has made a determination under section 165(j) that the company poses a grave threat to the financial stability of the United States and that the imposition of the statutory debt-to-equity ratio requirement is necessary. An identified company would be permitted 180 calendar days from the date of receipt of the notice to comply with the 15-to-1 debt-to-equity ratio requirement. The proposed rule does not establish a specific set of actions to be taken by a company in order to comply with the debt-to-equity ratio requirement; however, the Board would expect a company to come into compliance with the ratio in a manner

[185] The statute expressly exempts any federal home loan bank from the debt-to-equity ratio requirement. *See* 12 U.S.C. 5366(j)(1).

[186] 12 U.S.C. 5366(j)(3).

that is consistent with the company's safe and sound operation and preservation of financial stability. For example, a company generally would be expected to make a good faith effort to increase equity capital through limits on distributions, share offerings, or other capital raising efforts prior to liquidating margined assets in order to achieve the required ratio.

While it is important that a company that presents a grave threat to U.S. financial stability take prompt action to reduce risks to financial stability, section 252.152(b) provides that an identified company may request an extension of time to comply with the debt-to-equity ratio requirement for up to two additional periods of 90 days each. Requests for an extension of time to comply must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance, and must provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest. The proposed 180-day period is intended to provide sufficient time for an identified company to take appropriate action to comply with the debt-to-equity ratio requirement. In the event that an extension of time is requested, the Board would review the request in light of the relevant facts and circumstances, including the extent of the identified company's efforts to comply with the ratio and whether the extension would be in the public interest.

Section 252.152(c) provides that an identified company would no longer be subject to the debt-to-equity ratio requirement of this subpart as of the date it receives notice of a determination by the Council that the company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is no longer necessary.

The Board requests comment on all aspects of the proposed rule, and specifically on the definitions of debt and equity and on whether the proposed 180-day time period for compliance is appropriate.

Question 77: What alternatives to the definitions and procedural aspects of this proposed rule should the Board consider?

IX. Early Remediation

A. Background

The recent financial crisis revealed that the condition of large banking organizations can deteriorate rapidly even during periods when their reported capital ratios are well above minimum requirements. The crisis also revealed fundamental weaknesses in the U.S. regulatory community's tools to deal promptly with emerging issues. As detailed in the Government Accountability Office's (GAO) June 2011 study on the effectiveness of the prompt corrective action (PCA) regime, the PCA regime's triggers, based primarily on regulatory capital ratios, limited its ability to promptly address problems at insured depository intuitions.[187] The study also concluded that the PCA regime failed to prevent widespread losses to the deposit insurance fund, and that while supervisors had the discretion to act more quickly, they did not consistently do so.[188]

Section 166 of the Dodd-Frank Act was designed to address these problems by directing the Board to promulgate regulations providing for the early remediation of financial weaknesses at covered companies. The Dodd-Frank Act requires the Board to define measures of a covered company's financial condition, including, but not limited to, regulatory capital, liquidity measures and other forward-looking indicators that would trigger remedial action. The Act also mandates that remedial action requirements increase in stringency as the financial condition of a covered company deteriorates and include: (i) limits on capital distributions, acquisitions and asset growth in the early stages of financial decline; and (ii) capital restoration plans, capital raising requirements, limits on transactions with affiliates, management changes and asset sales in the later stages of financial decline.[189]

B. Overview of the Proposed Rule

The proposed rule establishes a regime for the early remediation of financial distress at covered companies that includes four levels of remediation requirements and several forward-looking triggers designed to identify emerging or potential issues before they develop into larger problems. The four levels of remediation are: (i) Heightened supervisory review, in which the Board would conduct a targeted review of the covered company to determine if it should be moved to the next level of remediation; (ii) initial remediation, in which a covered company would be subject to restrictions on growth and capital distributions; (iii) recovery, in which a firm would be subject to a prohibition on growth and capital distributions, limits on executive compensation, and requirements to raise additional capital, and additional requirements on a case-by-case basis; and (iv) recommended resolution, in which the Board would consider whether to recommend to the Treasury Department and the FDIC that the firm be resolved under the orderly liquidation authority provided for in Title II of the Dodd-Frank Act.

While the proposed framework includes regulatory capital triggers, which the Board recognizes can be a lagging indicator, non-discretionary restrictions on growth and capital distributions would occur once a covered company's capital levels fall below the ''well capitalized'' threshold. In contrast, similar actions do not occur under the PCA regime until a depository institution falls below the ''adequately capitalized'' level.[190]

Further, in December 2010, the BCBS adopted a series of reforms directed at improving the quantity and quality of capital held by internationally active banking organizations. Specifically, the Basel III reforms introduce a minimum tier 1 common risk-based capital ratio, heighten the qualification standards for regulatory capital, introduce a capital conservation buffer on top of minimum regulatory capital ratios, and raise the minimum tier 1 capital risk-based requirement. In addition, under the Basel II-based advanced approaches rule, companies are required to estimate expected credit losses and deduct from capital the amount by which expected credit losses exceed eligible credit reserves, as defined in the rule.[191] The reforms are expected to result in regulatory capital ratios that provide a more accurate reflection of a company's condition. As noted above, the Board and the other federal banking agencies are in the process of developing a proposal to implement the Basel III framework in the United States. The Board expects to evaluate the interaction between the early remediation framework for covered companies and any revised capital standards as those standards are incorporated into U.S. regulation, and may propose conforming changes to the

[187] *See* Government Accountability Office, *Modified Prompt Corrective Action Framework Would Improve Effectiveness,* GAO–11–612 (June 23, 2011), *available at http://www.gao.gov/new.items/d11612.pdf* (hereinafter GAO Study). PCA is required by section 38 of the Federal Deposit Insurance Act. 12 U.S.C. 1831(*o*). PCA applies only to insured depository institutions, rather than to consolidated banking organizations.

[188] *See id.*

[189] 12 U.S.C. 5366.

[190] *See* 12 CFR 208.45.

[191] *See* 12 CFR part 225, appendix G.

early remediation framework at that time.

In addition to regulatory capital-based triggers, the proposed rule includes forward-looking triggers based on (i) supervisory stress tests, which provide an assessment of the covered company's ability to withstand adverse economic and financial market conditions; and (ii) market indicators, which provide a third-party assessment of the covered company's financial position. The Board also has sought to harmonize the proposed rule with the risk management and risk committee requirements as well as the liquidity risk management standards that would be applicable to covered companies under this proposed rule. Identified weakness in any of the enhanced risk management and liquidity risk management standards may also trigger supervisory actions, including non-discretionary actions specified in the early remediation regime.

The Board considered including an explicit quantitative liquidity trigger in the proposal, but is concerned that such a trigger could exacerbate funding pressures at affected covered companies, rather than provide for early remediation of issues. The Board also considered including certain balance sheet measures as triggers, including nonperforming loans and loan concentrations, in the early remediation regime. In its recent study, the GAO identified asset quality as an important predictor of future bank failure.[192] However, the Board is concerned that such triggers would be inappropriate for firms engaged predominantly in activities other than commercial banking, and therefore would provide limited value in an early remediation regime applicable to all covered companies.

In implementing the proposed rule, the Board expects to notify the primary regulators of a covered company's subsidiaries and the FDIC as the covered company enters into or changes remediation levels.

Question 78: The Board recognizes that liquidity ratios can provide an early indication of difficulties at a covered company and seeks comment on the costs and benefits of including a quantitative liquidity trigger in the early remediation regime. If the Board were to include a quantitative liquidity trigger in the regime, what quantitative liquidity trigger should be used and how should it be calibrated?

Question 79: The Board also seeks comment on the value of including balance sheet measures, such as nonperforming loans and loan concentrations, in the early remediation regime as triggers. What balance sheet measures, if any, should the Board include, and how should they be calibrated?

Tables 4 and 5 below provide a summary of all triggers and associated remediation actions in this proposed rule.

TABLE 4—EARLY REMEDIATION TRIGGERS

	Risk-based capital/leverage	Stress tests	Enhanced risk management and risk committee standards	Enhanced liquidity risk management standards	Market indicators
Level 1 (Heightened Supervisory Review (HSR)).	Meets all risk-based and leverage requirements for a well capitalized covered company: Tier 1 RBC ratio > 6.0%. Total RBC ratio > 10.0%. Tier 1 Leverage ratio > 5.0%. However, the covered company has demonstrated capital structure or capital planning weaknesses.	Covered company's regulatory capital ratios exceed minimum requirements under the supervisory stress test severely adverse scenario but it is otherwise in noncompliance with the Board's capital plan or stress testing rules.	Covered company has manifested signs of weakness in meeting enhanced risk management or risk committee requirements for covered companies.	Covered company has manifested signs of weakness in meeting the enhanced liquidity risk management standards for covered companies.	The median value of any of the covered company's market indicators exceeds the trigger threshold for the entire breach period.
Level 2 (Initial Remediation).	Fails to meet any one of the Level 1 capital levels and maintains: Tier 1 RBC ratio > 4.0% Total RBC ratio > 8.0% Tier 1 Leverage ratio > 4.0%	Under the supervisory stress test severely adverse scenario, the company's *Tier 1 common RBC ratio falls below 5%* during any quarter of the nine quarter planning horizon.	Covered company has demonstrated multiple deficiencies in meeting the enhanced risk management and risk committee requirements for covered companies.	Covered company has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management standards for covered companies.	n.a.

[192] *See* GAO Study, *supra* note 187, at 2.

TABLE 4—EARLY REMEDIATION TRIGGERS—Continued

	Risk-based capital/leverage	Stress tests	Enhanced risk management and risk committee standards	Enhanced liquidity risk management standards	Market indicators
Level 3 (Recovery)	Fails to meet any one of the Level 2 capital levels and maintains: Tier 1 RBC ratio > 3.0% Total RBC ratio > 6.0% Tier 1 Leverage ratio > 3.0% Or institution's risk-based capital ratios remain below 6.0% Tier 1 RBC, 10.0% Total RBC, or 5.0% Leverage, for more than two complete consecutive calendar quarters.	Under the severely adverse scenario, the covered company's *Tier 1 common RBC ratio falls below 3%* during any quarter of the nine quarter planning horizon.	Covered company is in substantial noncompliance with enhanced risk management and risk committee requirements for covered companies.	Covered company is in substantial noncompliance with enhanced liquidity risk management standards for covered companies.	n.a.
Level 4 (Recommended resolution).	Covered company's regulatory capital ratios are below any of the following thresholds: 3.0% Tier 1 RBC 6.0% Total RBC 3.0% Tier 1 Leverage ratio	n.a	n.a	n.a	n.a.

TABLE 5—REMEDIATION ACTIONS

	Risk-based capital/leverage	Stress tests	Enhanced risk management and risk committee requirements	Enhanced liquidity risk management standards	Market indicators
Level 1 (Heightened Supervisory Review).	Heightened Supervisory Review (HSR): The Board will produce an internal report on the elements evidencing deterioration within 30 days of a Level 1 trigger breach and determine whether the institution should be elevated to a higher level of remediation.	HSR	HSR	HSR	HSR.
Level 2 (Initial Remediation).	All capital distributions (e.g., dividends and buybacks) are restricted to no more than 50% of the average of the covered company's net income in the previous two quarters. Covered company faces restrictions on growth (no more than 5% growth in total assets or total RWA per quarter or per annum), and is generally prohibited from directly or indirectly acquiring controlling interest in any company. Covered company will be subject to a non-public MOU. Covered company may be subject to other limitations and conditions on its conduct or activities as the Board deems appropriate.				n.a.

TABLE 5—REMEDIATION ACTIONS—Continued

	Risk-based capital/ leverage	Stress tests	Enhanced risk management and risk committee requirements	Enhanced liquidity risk management standards	Market indicators
Level 3 (Recovery)	Covered company is placed under a written agreement that prohibits all capital distributions, any quarterly growth of total assets or RWA, and material acquisitions. The written agreement will also include a requirement to raise additional capital to restore the covered company's capital level to or above regulatory minimums. If written agreement timeframes are not met, the covered company may be subject to divestiture requirements. Covered company will also be subject to a prohibition on discretionary bonus payments and restrictions on pay increases. Supervisors may also remove culpable senior management and limit transactions between affiliates. Covered company may be subject to other limitations and conditions on its conduct or activities as the Board deems appropriate.				n.a.
Level 4 (Recommended Resolution).	The Board will consider whether to recommend to the Treasury Department and the FDIC that the covered company be resolved under the orderly liquidation authority provided for in Title II of the Dodd-Frank Act.	n.a.			n.a.

1. Early Remediation Requirements

a. Level 1 Remediation (Heightened Supervisory Review)

The proposed rule provides that the first level of remediation consists of heightened supervisory review. Level 1 remediation would be triggered when a covered company first shows signs of financial distress or material risk management weaknesses such that further decline of the company is probable. Level 1 remediation would require the Board to produce a report on the elements evidencing deterioration within 30 days and determine whether the institution should be elevated to a higher level of remediation.

In determining whether to elevate the covered company to a higher level of remediation, the Board would consider the extent to which the factors giving rise to a triggering event were caused by financial weakness or material risk management weaknesses at the covered company, such that further decline of the company is probable. The Board may also use other supervisory authority to cause the covered company to take appropriate actions to address the problems reviewed by the Board under level 1 remediation.

b. Level 2 Remediation (Initial Remediation)

The Dodd-Frank Act provides that remedial actions required of covered companies in the initial stages of financial decline shall include limits on capital distributions, acquisitions and asset growth. The proposed rule provides that a covered company that triggers level 2 remediation (because it does not meet certain risk-based capital, leverage, or stress test thresholds, or has ongoing weaknesses in multiple requirements under the enhanced liquidity risk management standards and enterprise-wide risk management requirements included in this proposal) would be prohibited from distributing in any calendar quarter more than 50 percent of the average of its net income for the preceding two calendar quarters. The company would also be prohibited from permitting (i) its daily average total assets and daily average total risk-weighted assets in any calendar quarter to exceed daily average total assets and daily average total risk-weighted assets, respectively, during the preceding calendar quarter by more than 5 percent; and (ii) its daily average total assets and daily average total risk-weighted assets in any calendar year to exceed daily average total assets and daily average total risk-weighted assets, respectively, during the preceding calendar year by more than 5 percent.

The covered company would also be prohibited from directly or indirectly acquiring a controlling interest in any company without the prior approval of the Board. This includes controlling interests in any nonbank company and the establishment or acquisition of any office or place of business. Non-controlling acquisitions, such as the acquisition of less than 5 percent of the voting shares of a company, generally would not require prior approval. The covered company would also be required to enter into a non-public memorandum of understanding or undergo another enforcement action acceptable to the Board.

As part of level 2 remediation, the Board would also be able to impose limitations or conditions on the conduct or activities of the covered company or any of its affiliates as the Board deems appropriate and consistent with the purposes of Title I of the Dodd-Frank Act, including limitations or conditions deemed necessary to improve the safety and soundness of the covered company, promote financial stability, or limit the external costs of the potential failure of the covered company.

The restriction on capital distributions under level 2 remediation would apply to all capital distributions (common stock dividends and share repurchases) and would help to ensure that covered companies preserve capital through retained earnings during the earliest periods of financial stress, thereby building a capital cushion to absorb losses that the covered company may continue to accrue due to the weaknesses that caused it to enter level 2 remediation. This cushion is important to making the covered company's failure less likely, and also to minimize the external costs that the

covered company's distress or possible failure could impose on markets and the economy generally.

In developing this proposed rule, the Board considered the impact of the proposed restriction on capital distributions under level 2 remediation. According to data reviewed by the Board, prohibiting a weakened covered company from distributing more than 50 percent of its recent earnings should promote the important purpose of building a capital cushion at the covered company to absorb potential additional losses while still allowing the firm some room to pay dividends and repurchase shares. The Board notes that the capital conservation buffer under Basel III is similarly designed to impose increasingly stringent restrictions on capital distributions and employee bonus payments by banking organizations as their capital ratios approach regulatory minima.[193]

Furthermore, the level 2 remediation restrictions on asset growth is intended to prevent covered companies that are encountering the initial stages of financial difficulties from growing at a rate inconsistent with preserving capital and focusing on resolving material financial or risk management weaknesses. A 5 percent limit should generally be consistent with reasonable growth in the normal course of a covered company's business.

The level 2 remediation restriction on acquisitions of controlling interests in other companies without prior Board approval is also intended to prevent covered companies that are experiencing initial stages of financial difficulties from materially increasing their size or systemic interconnectedness. A company in early stages of financial stress needs to focus its energies on improving its financial condition, not on seeking major acquisition opportunities or integrating major new acquisitions. Under this provision, the Board would evaluate the materiality of acquisitions on a case-by-case basis to determine whether approval is warranted. Acquisition of non-controlling interests would continue to be permitted to allow covered companies to proceed with ordinary business functions (such as equity securities dealing) that may involve acquisitions of shares in other companies that do not rise to the level of control.

The proposed rule would also require covered companies that are subject to level 2 remediation to enter into a non-public memorandum of understanding with the Federal Reserve in order to facilitate the establishment of a reasonable action plan for the covered company to improve its condition.

c. Level 3 Remediation (Recovery)

The Act provides that remediation actions required of covered companies in advanced stages of financial stress shall include a capital restoration plan and capital raising requirements, limits on transactions with affiliates, management changes and asset sales. Accordingly, under the proposed rule, a covered company that has entered level 3 remediation (because the covered company did not meet certain risk-based capital, leverage or stress test thresholds, or is in substantial non-compliance with the enhanced risk management or enhanced liquidity standards of this proposal) would be subject to a number of fixed limitations. The covered company would be prohibited from making any capital distributions and from increasing the compensation of, or paying any bonus to, its senior executive officers or directors. Additionally, the covered company could not permit its average total assets or average total risk-weighted assets during any calendar quarter to exceed average total assets or average total risk-weighted assets during the previous quarter. The covered company would also be prohibited from (i) directly or indirectly acquiring any interest in any company; (ii) establishing or acquiring any office or other place of business; or (iii) engaging in any new line of business.

Furthermore, the covered company would be required to enter into a written agreement or other form of formal enforcement action with the Board that would specify that it must raise capital and take other actions to improve capital adequacy. If the covered company subsequently did not satisfy the requirements of the written agreement, the Board could require the company to divest assets identified by the Board as contributing to the covered company's financial decline or that pose substantial risk of contributing to the company's further financial decline.

Under the proposal, the Board could also require a covered company under level 3 remediation to conduct new elections for its board of directors, dismiss directors or senior executive officers that have been in office for more than 180 days, hire senior executive officers approved by the Board, or limit transactions with its affiliates.

The Board believes that these restrictions would appropriately limit a covered company's ability to increase its risk profile and ensure maximum capital conservation when its condition or risk management failures have deteriorated to the point that it is subject to this level of remediation. These restrictions, while potentially disruptive to aspects of the company's business, are consistent with the purpose of section 166 of the Dodd-Frank Act: to arrest a covered company's decline and help to mitigate external costs associated with its potential failure.

Furthermore, to the extent that a covered company's management is a primary cause of its level 3 remediation status, the proposal would allow the Board to take appropriate action to ensure that such management could not increase the risk profile of the company or make its failure more likely. Taken together, the mandatory and optional restrictions and actions of level 3 remediation provide the Board with important tools to make a covered company's failure less likely and if failure were to occur, less costly to the financial system.

d. Level 4 Remediation (Resolution Assessment)

Under the proposed rule, if level 4 remediation is triggered (because the covered company did not meet certain risk-based capital or leverage requirements), the Board would consider whether to recommend to the Treasury Department and the FDIC that the firm be resolved under the orderly liquidation authority provided for in Title II of the Dodd-Frank Act, based on whether the covered company is in default or in danger of default and poses a risk to the stability of the U.S. financial system pursuant to section 203 of the Dodd-Frank Act.

Question 80: The Board seeks comment on the proposed mandatory actions that would occur at each level of remediation. What, if any, additional or different restrictions should the Board impose on distressed covered companies?

2. Early Remediation Triggering Events

The proposed rule provides triggering events based on the Board's existing definitions of minimum risk-based capital and leverage ratios, the results of the Board's supervisory stress tests under this proposed rule, weaknesses in complying with enhanced risk management and liquidity standards under this proposed rule and market indicators.

a. Risk-Based Capital and Leverage

The Act specifies that capital and leverage will be among the elements used to evaluate the financial condition of a covered company under the early

[193] *See* Basel III framework, *supra* note 34, at 60.

remediation framework. The risk-based capital and leverage ratios for each covered company would be measured using periodic statements, in connection with inspections of a covered company, or upon request of the Board.

Although there is no fixed capital-related threshold for level 1 remediation, weaknesses in a covered company's capital structure or capital planning processes could lead to level 1 remediation, even where the covered company's capital ratios exceed the minimum levels for level 2 remediation. Thus, if a covered company maintains a total risk-based capital ratio of 10.0 percent or greater, a tier 1 risk-based capital ratio of 6.0 percent or greater, and a tier 1 leverage ratio of 5.0 percent or greater, but the Board determines that its financial condition is not commensurate with the risks posed by its activities, then level 1 remediation would apply. Level 2 remediation (initial remediation) would apply if a covered company has a total risk-based capital ratio of less than 10.0 percent and greater than or equal to 8.0 percent, a tier 1 risk-based capital ratio of less than 6.0 percent and greater than or equal to 4.0 percent, or a tier 1 leverage ratio of less than 5.0 percent and greater than or equal to 4.0 percent.

A covered company would be subject to level 3 remediation (recovery) if:

(i) For two complete consecutive quarters, the covered company has a total risk-based capital ratio of less than 10.0 percent, a tier 1 risk-based capital ratio of less than 6.0 percent, or a tier 1 leverage ratio of less than 5.0 percent; or

(ii) The covered company has a total risk-based capital ratio of less than 8.0 percent and greater than or equal to 6.0 percent, a tier 1 risk-based capital ratio of less than 4.0 percent and greater than or equal to 3.0 percent or a tier 1 leverage ratio of less than 4.0 percent and greater than or equal to 3.0 percent.

Finally, a covered company would be subject to level 4 remediation (resolution assessment) if it has a total risk-based capital ratio of less than 6.0 percent, a tier 1 risk-based capital ratio of less than 3.0 percent or a tier 1 leverage ratio of less than 3.0 percent. The Board believes that the remediation requirements listed above are reasonable restraints on covered companies that are unable to meet these regulatory capital thresholds.

Question 81: The Board seeks comment on the proposed risk-based capital and leverage triggers. What alternative or additional risk-based capital or leverage triggering events, if any, should the Board adopt? Provide a detailed explanation of such alternative triggering events with supporting data.

b. Stress Tests

As discussed more fully in section VII of this proposal, the supervisory stress test gauges a covered company's capital adequacy under baseline, adverse and severely adverse scenarios. The proposed rule would use the results of the stress test under the severely adverse scenario to trigger early remediation. A covered company whose tier 1 common risk-based capital ratio falls below certain minimum thresholds under the severely adverse scenario during any quarter of the planning horizon (which extends for at least nine quarters) would be subject to early remediation. Under the rule as proposed, the lower the tier 1 common risk-based capital ratio under the stress test, the more stringent the required remedial actions would be. Specifically:

(i) *Level 1 remediation.* A covered company would be subject to level 1 remediation if it is not in compliance with any regulations adopted by the Board relating to capital plans and stress tests.[194] The Board believes that even if a covered company meets the minimum regulatory capital requirements under the severely adverse stress scenario, noncompliance with the Board's capital plan or stress testing regulations is sufficient to warrant level 1 remediation.

(ii) *Level 2 remediation.* A covered company would be subject to level 2 remediation if, under the results of the severely adverse stress test in any quarter of the planning horizon, the covered company's tier 1 common risk-based capital ratio fell below 5.0 percent and remained above 3.0 percent.

(iii) *Level 3 remediation.* A covered company would be subject to level 3 remediation if, under the results of the severely adverse stress test in any quarter of the planning horizon, the covered company's tier 1 common risk-based capital ratio fell below 3.0 percent.

Question 82: What additional factors should the Board consider when incorporating stress test results into the early remediation framework? Is the severely adverse scenario appropriately incorporated as a triggering event? Why or why not?

c. Risk Management

The Board believes that material weaknesses and deficiencies in risk management could contribute significantly to a firm's decline and ultimate failure. The proposed rule provides that, if the Board determines that a covered company has failed to comply with the enhanced risk management provisions of Subpart E of this proposed rule, it would be subject to level 1, 2, or 3 remediation, depending on the severity of the compliance failure.

Thus, for example, level 1 remediation would be appropriate if a covered company has manifested signs of weakness in meeting the proposal's enhanced risk management and risk committee requirements. Similarly, level 2 remediation would be appropriate if a covered company has demonstrated multiple deficiencies in meeting the enhanced risk management or risk committee requirements, and level 3 remediation would be appropriate if the covered company is in substantial noncompliance with the enhanced risk management and risk committee requirements.

Question 83: The Board seeks comment on triggers tied to risk management weaknesses. Should the Board consider specific risk management triggers tied to particular events? If so, what might such triggers involve? How should failure to promptly address material risk management weaknesses be addressed by the early remediation regime? Under such circumstances, should companies be moved to progressively more stringent levels of remediation, or are other actions more appropriate? Provide a detailed explanation.

d. Liquidity

The Dodd-Frank Act provides that the measures of financial condition to be included in the early remediation framework shall include liquidity measures. Under the proposal, a covered company would be subject to level 1, level 2, or level 3 remediation if the Board determines that the company's measurement or management of its liquidity risks is not in compliance with the requirements of Subpart C of this proposed rule. The level of remediation to which a covered company would be subject shall vary, at the discretion of the Board, depending on the severity of the compliance failure.

Thus, for example, level 1 remediation would be appropriate if a covered company has manifested signs of weakness in meeting the proposal's enhanced liquidity risk management standards. Similarly, level 2 remediation would be appropriate if a covered company has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management standards, and level 3 remediation would be appropriate if the covered

[194] *See* 12 CFR 225.8.

company is in substantial noncompliance with the enhanced liquidity risk management standards.

e. Market Indicators

Section 166(c)(1) of the Dodd-Frank Act directs the Board, in defining measures of a covered company's condition, to utilize ''other forward-looking indicators''. A review of market indicators in the lead up to the recent financial crisis reveals that market-based data often provided an early signal of deterioration in a company's financial condition. Moreover, numerous academic studies have concluded that market information is complementary to supervisory information in uncovering problems at financial companies.[195] Accordingly, the Board proposes to use a variety of market-based triggers designed to capture both emerging idiosyncratic and systemic risk across covered companies in the early remediation regime. The Board proposes to implement a system of market-based triggers that prompts a heightened supervisory review (level 1 remediation) of a covered company's financial condition and risk management. The Board would produce a report on the elements evidencing deterioration within 30 days of a covered company hitting a market indicator trigger and determine whether the institution should be elevated to a higher level of remediation. In determining whether to elevate the covered company to a higher level of remediation, the Board would consider the extent the factors giving rise to a triggering event were caused by financial weakness or material risk management weaknesses at the covered company such that further decline of the company is probable. The Board may also use other supervisory authority to cause the covered company to take appropriate actions to address the problems reviewed by the Board under level 1 remediation.

The Board recognizes that market-based early remediation triggers—like all early warning metrics—have the potential to trigger remediation for firms that have no material weaknesses (false positives) and fail to trigger remediation for firms whose financial condition has deteriorated (false negatives), depending on the sample, time period and thresholds chosen. Further, the Board notes that if market indicators are used to trigger corrective actions in a regulatory framework, market prices may adjust to reflect this use and potentially become less revealing over time. Accordingly, the Board is not proposing to use market-based triggers to subject a covered company directly to early remediation levels 2, 3, or 4 at this time. The Board expects to review this approach after gaining additional experience with the use of market data in the supervisory process.

Given that the informational content and availability of market data will change over time, the Board also proposes to publish for notice and comment the market-based triggers and thresholds on an annual basis (or less frequently depending on whether the Board determines that changes to an existing regime would be appropriate), rather than specifying these triggers in this rule. In order to ensure transparency, the Board's disclosure of market-based triggers would include sufficient detail to allow the process to be replicated in general form by market participants. The Board seeks comment on the use of market indicators described below. Before commencing use of any particular market-based indicator the Board intends to publish such indicators for notice and comment.

i. Proposed Market Indicators

In selecting market indicators to incorporate into the early remediation regime, the Board focused on indicators that have significant information content, i.e. for which prices quotes are available, and provide a sufficiently early indication of emerging or potential issues. The Board proposes to use the following or similar market-based indicators in its early remediation framework:

1. Equity-Based Indicators

Expected default frequency (EDF). The EDF measures the expected probability of default in the next 365 days. The Board uses EDFs calculated using Moody's KMV RISKCALC model.

Marginal expected shortfall (MES). The MES of a financial institution is defined as the expected loss on its equity when the overall market declines by more than a certain amount. Each financial institution's MES depends on the volatility of its stock price, the correlation between its stock price and the market return, and the co-movement of the tails of the distributions for its stock price and for the market return. The Board uses MES calculated following the methodology of Acharya, Pederson, Phillipon, and Richardson (2010). MES data are available at *http://vlab.stern.nyu.edu/welcome/risk.*

Market Equity Ratio. The market equity ratio is defined as the ratio of market value of equity to market value of equity plus book value of debt.

Option-implied volatility. The option-implied volatility of a firm's stock price is calculated from out-of-the-money option prices using a standard option pricing model, reported as an annualized standard deviation in percentage points by Bloomberg.

2. Debt-Based Indicators

Credit default swaps (CDS). The Board uses CDS offering protection against default on a 5-year maturity, senior unsecured bond by a financial institution.

Subordinated debt (bond) spreads. The Board uses financial companies' subordinated bond spreads with a remaining maturity of at least 5 years over the Treasury rate with the same maturity or the LIBOR swap rate published by Bloomberg.

The Board recognizes that all market indicators for different covered companies are not traded with the same frequency and therefore may not contain the same level of informational content.

Question 84: The Board seeks comment on the proposed approach to market-based triggers detailed below, alternative specifications of market-based indicators, and the potential benefits and challenges of introducing additional market-based triggers for levels 2, 3, or 4 of the proposed early remediation regime. In addition, the Board seeks comment on the sufficiency of information content in market-based indicators generally.

ii. Proposed Trigger Design

The Board's proposed market indicator-based regime would trigger heightened supervisory review when any of the covered company's indicators cross a threshold based on different percentiles of historical distributions. The Board seeks comment on the use of both time-variant and time-invariant triggers, as follows:

Time-variant triggers capture changes in the value of a company's market-based indicator relative to its own past performance and the past performance of its peers. Peer groups would be determined on an annual basis. Current values of indicators, measured in levels and changes, would be evaluated relative to a covered company's own time series (using a rolling 5-year window) and relative to the median of a group of predetermined low-risk peers

[195] *See, e.g.,* Berger, Davies, and Flannery, *Comparing Market and Supervisory Assessments of Bank Performance: Who Knows What When?* Journal of Money, Credit, and Banking, 32 (3), at 641–667 (2000). Krainer and Lopez, *How Might Financial Market Information Be Used for Supervisory Purposes?,* FRBSF Economic Review, at 29–45 (2003). Furlong and Williams, *Financial Market Signals and Banking Supervision: Are Current Practices Consistent with Research Findings?,* FRBSF Economics Review, at 17–29 (2006).

(using a rolling 5-year window), and after controlling for market or systematic effects.[196] The value represented by the percentiles for each signal varies over time as data is updated for each indicator.

For all time-variant triggers, heightened supervisory review would be required when the median value of at least one market indicator over a period of 22 consecutive business days, either measured as its level, its 1-month change, or its 3-month change, both absolute and relative to the median of a group of predetermined low-risk peers, is above the 95th percentile of the firm's or the median peer's market indicator 5-year rolling window time series. The Board proposes to use time-variant triggers based on all six market indicators listed above.

Time-invariant triggers capture changes in the value of a company's market-based indicators relative to the historical distribution of market-based variables over a specific fixed period of time and across a predetermined peer group. Time-invariant triggers are used to complement time-variant triggers since time-variant triggers could lead to excessively low or high thresholds in cases where the rolling window covers only an extremely benign period or a highly disruptive financial period. The Board acknowledges that a time-invariant threshold should be subject to subsequent revisions when warranted by circumstances.

As currently contemplated, the Board would consider all pre-crisis panel data for the peer group (January 2000–December 2006), which contain observations from the subprime crisis in the late 1990s and early 2000s as well as the tranquil period of 2004–2006. For each market indicator, percentiles of the historical distributions would be computed to calibrate time-invariant thresholds. The Board would focus on five indicators for time-invariant triggers, calibrated to balance between their propensity to produce false positives and false negatives: CDS prices, subordinated debt spreads, option-implied volatility, EDF and MES. The market equity ratio is not used in the time-invariant approach because the cross-sectional variation of this variable was not found to be informative of early issues across financial companies. Time-invariant thresholds would trigger heightened supervisory review if the median value for a covered company over 22 consecutive business days was above the threshold for any of the market indicators used in the regime.

In considering all thresholds for each time-invariant trigger, the Board evaluated the tradeoff between early signals and supervisory burden associated with potentially false signals. Data limitations in the time-invariant approach also require the construction of different thresholds for different market indicators. The Board proposes the following calibration:

CDS. The CDS price data used to create the distribution consist of an unbalanced panel of daily CDS price observations for 25 financial companies over the 2001- 2006 period. Taking the skewed distribution of CDS prices in the sample and persistent outliers into account, the threshold was set at 44 basis points, which corresponds to the 80th percentile of the distribution.

Subordinated debt (bond) spreads. The data covered an unbalanced panel of daily subordinated debt spread observations for 30 financial companies. Taking the skewed distribution into account, the threshold was set to 124 basis points, which corresponds to the 90th percentile of the distribution.

MES. The data covered a balanced panel of daily observations for 29 financial companies. The threshold was set to 4.7 percent, which corresponds to the 95th percentile of the distribution.

Option-implied volatility. The data covered a balanced panel of daily option-implied volatility observations for 29 financial companies. The threshold was set to 45.6 percent, which corresponds to the 90th percentile of the distribution.

EDF. The monthly EDF data cover a balanced panel of 27 financial companies. The threshold was set to 0.57 percent, which corresponds to the 90th percentile of the distribution.

The Board invites comment on the use of market indicators to prompt early remediation actions.

Question 85: Should the Board include market indicators described above in the early remediation regime? If not, what other forward-looking indicators should the Board include?

Question 86: Are the indicators outlined above the correct set of indicators to consider? Should other market-based triggers be considered?

Question 87: How should the Board consider the liquidity of an underlying security when it chooses indicators?

Question 88: The Board proposes using both absolute levels and changes in indicators. Over what period should changes be calculated?

Question 89: Should the Board use both time-variant and time-invariant indicators? What are the comparative advantages of using one or the other?

Question 90: Is the proposed trigger time (when the median value over a period of 22 consecutive business days crosses the predetermined threshold) to trigger heightened supervisory review appropriate? What periods should be considered and why?

Question 91: Should the Board use a statistical threshold to trigger heightened supervisory review or some other framework?

Question 92: Should the Board consider using market indicators to move covered companies directly to level 2 (initial remediation)? If so, what time thresholds should be considered for such a trigger? What would be the drawbacks of such a second trigger?

Question 93: To what extent do these indicators convey different information about the short-term and long-term performance of covered companies that should be taken into account for the supervisory review?

Question 94: Should the Board use peer comparisons to trigger heightened supervisory review? If so, should the Board consider only low-risk covered companies for the peer group or a broader range of financial companies? If a broader a range is more appropriate, how should the peer group be defined?

Question 95: How should the Board account for overall market movements in order to isolate idiosyncratic risk of covered companies?

C. Notice and Remedies

The proposed rule provides that the initiation of early remediation and the transfer of a covered company from one level of remediation to another would occur upon notice from the Board. Similarly, a covered company shall remain subject to the requirements imposed by early remediation until the Board notifies the covered company that its financial condition no longer warrants application of the requirement. Covered companies have an affirmative duty to notify the Board of triggering events and other changes in circumstances that could result in changes to the early remediation provisions that apply to it.

D. Relationship to Other Laws and Requirements

The early remediation regime that would be established by the proposed rule would supplement rather than replace the Board's other supervisory processes with respect to covered companies. The proposed rule would not limit the existing supervisory authority vested in the Board, including the Federal Reserve's authority to

[196] Market or systemic effects are controlled by subtracting the median of corresponding changes from the peer group.

initiate supervisory actions to address deficiencies, unsafe or unsound conduct, practices, or conditions, or violations of law. For example, the Board may respond to signs of a covered company's financial stress by requiring corrective measures in addition to remedial actions required under the proposed rule. The Board also may use other supervisory authority to cause a covered company to take remedial actions enumerated in the early remediation regime on a basis other than a triggering event.

X. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains requirements subject to the PRA. The reporting requirements are found in section 252.164(b); the recordkeeping requirements are found in sections 252.61 [197] and 252.145(b)(1); [198] and the disclosure requirements are found in section 252.148. The recordkeeping burden for the following sections is accounted for in the section 252.61 burden: 252.52(b)(3), 252.56, 252.58, 252.60(a), and 252.60(c). These information collection requirements would implement section 165 and 166 of the Dodd-Frank Act, as mentioned in the Abstract below.

The reporting requirements found in section 252.136(b) have been addressed in the Resolution Plans Required Regulation (Reg QQ).[199] The reporting requirements found in sections 252.13(a), 252.96(a), 252.134(a), 252.146(a), and 252.146(b) will be addressed in a separate **Federal Register** notice at a later date.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

(b) The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the Federal banking agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by facsimile to (202) 395–5806, Attention, Commission and Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Frequency of Response: Annual, semiannual, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, and state member banks.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards and section 166 requires the Board to implement an early remediation framework. The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability.

Section 252.61 would require a covered company to adequately document all material aspects of its liquidity risk management processes and its compliance with the requirements of Subpart C and submit all such documentation to the risk committee.

Section 252.145(b)(1) would require that each covered company or over $10 billion company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress testing processes used by the covered company or over $10 billion company are effective in meeting the requirements in Subpart G. These policies and procedures must, at a minimum, describe the covered company's or over $10 billion company's stress testing practices and methodologies, validation and use of stress tests results, and processes for updating the company's stress testing practices consistent with relevant supervisory guidance. Policies of covered companies must describe processes for scenario development for the additional stress test required under section 252.144.

Section 252.148 would require public disclosure of results required for stress tests of covered companies and over $10 billion companies. Within 90 days of submitting a report for its required stress test under section 252.143 and section 252.144, as applicable, a covered company and over $10 billion company shall disclose publicly a summary of the results of the stress tests required under section 252.143 and section 252.144, as applicable. The information disclosed by each covered company and over $10 billion company, as applicable, shall, at a minimum, include: (i) A description of the types of risks being included in the stress test; (ii) for each covered company, a high-level description of scenarios developed by the company under section 252.144(b), including key variables used (such as GDP, unemployment rate, housing prices); (iii) a general description of the methodologies employed to estimate losses, revenues, allowance for loan

[197] Most of the recordkeeping requirements for Subpart C—Liquidity Requirements have been addressed in the Funding and Liquidity Risk Management Guidance (FR 4198; OMB No. 7100–0326). Only new recordkeeping requirements are being addressed with this proposed rulemaking.

[198] Some of the recordkeeping requirements for Subpart G—Company-Run Stress Test Requirements have been addressed in the proposed Recordkeeping and Disclosure Provisions Associated with Stress Testing Guidance (FR 4202). See the **Federal Register** notice published on June 15, 2011 (76 FR 35072). Only new recordkeeping requirements are being addressed with this proposed rulemaking.

[199] *See* 76 FR 67323 (November 1, 2011).

losses, and changes in capital positions over the planning horizon; and (iv) aggregate losses, pre-provision net revenue, allowance for loan losses, net income, and pro forma capital levels and capital ratios (including regulatory and any other capital ratios specified by the Board) over the planning horizon, under each scenario.

Section 252.164(b) would require that when a covered company becomes aware of (i) one or more triggering events set forth in section 252.163; or (ii) a change in condition that it believes should result in a change in the remediation provisions to which it is subject, such covered company must provide notice to the Board within 5 business days, identifying the nature of the triggering event or change in circumstances.

Estimated Paperwork Burden

Estimated Burden per Response:

Section 252.61 recordkeeping—200 hours (Initial setup 160 hours).

Section 252.145(b)(1) recordkeeping—40 hours (Initial setup 280 hours for U.S. bank holding companies $50 billion and over in total consolidated assets; 240 hours for institutions over $10 million in total consolidated assets).

Section 252.148 disclosure—80 hour (Initial setup 200 hours).

Section 252.164(b) reporting—2 hours.

Number of respondents: 34 U.S. bank holding companies with total consolidated assets of $50 billion or more, 39 U.S. bank holding companies with total consolidated assets over $10 billion and less than $50 billion, 21 state member banks with total consolidated assets over $10 billion, 39 savings and loan holding companies with total consolidated assets over $10 billion.

Total estimated annual burden: 97,736 hours (72,188 hours for initial setup and 25,548 hours for ongoing compliance).

C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act [200] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with sections 165 and 166 of the Dodd-Frank Act, the Board is proposing to adopt Regulation YY (12 CFR 252 *et seq.*) to establish enhanced prudential standards and early remediation requirements applicable for covered companies.[201] The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability.

Under regulations issued by the Small Business Administration (SBA), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[202] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in actives that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of $175 million or less are small entities for purposes of the RFA.

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rule generally would apply to a covered company, which includes only bank holding companies with $50 billion or more in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. However, the enterprise wide risk committee requirements required under section 165(h) of the Act would apply to any publicly traded bank holding company with total assets of $10 billion or more. The company-run stress test requirements part of the proposal being established pursuant to section 165(i)(2) of the Act also would apply to any bank holding company, savings and loan holding company, and state member bank with more than $10 billion in total assets. Companies that are subject to the proposed rule therefore substantially exceed the $175 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.[203] The proposed rule would apply to a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[204] It is therefore unlikely that a financial firm that is at or below the $175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the proposed rule is not likely to apply to any company with assets of $175 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with sections 165 and 166 of the Dodd-Frank Act.

List of Subjects in 12 CFR Part 252 and 12 CFR Chapter II

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

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board

[200] 5 U.S.C. 601 *et seq.*

[201] *See* 12 U.S.C. 5365 and 5366.

[202] 13 CFR 121.201.

[203] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the $50 billion asset threshold for the application of certain of the enhanced standards. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

[204] *See* 76 FR 4555 (January 26, 2011).

of Governors of the Federal Reserve System proposes to add the text of the rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 252 to 12 CFR chapter II as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

1. The authority citation for part 252 shall read as follows:

Authority: 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 5365, 5366.

2. Part 252 is added to read as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS

Subpart A—General Provisions

Sec.

252.1 Authority, purpose, applicability, and reservation of authority.
252.2 through 252.9 [Reserved]

Subpart B—Risk-Based Capital Requirements and Leverage Limits

252.11 Applicability.
252.12 Definitions.
252.13 Enhanced risk-based capital and leverage requirements.
252.14 Nonbank covered companies: reporting and enforcement.

Subpart C—Liquidity Requirements

252.51 Definitions.
252.52 Board of directors and risk committee responsibilities.
252.53 Senior management responsibilities.
252.54 Independent review.
252.55 Cash flow projections.
252.56 Liquidity stress testing.
252.57 Liquidity buffer.
252.58 Contingency funding plan.
252.59 Specific limits.
252.60 Monitoring.
252.61 Documentation.

Subpart D—Single-Counterparty Credit Limits

252.91 Applicability.
252.92 Definitions.
252.93 Credit exposure limit.
252.94 Gross credit exposure.
252.95 Net Credit Exposure.
252.96 Compliance.
252.97 Exemptions.

Subpart E—Risk Management

252.125 Definitions.
252.126 Establishment of risk committee and appointment of chief risk officer.

Subpart F—Supervisory Stress Test Requirements

252.131 Applicability.
252.132 Definitions.
252.133 Annual analysis conducted by the Board.
252.134 Data and information required to be submitted in support of the Board's analyses.
252.135 Review of the Board's analysis; publication of summary results.
252.136 Post-assessment actions by covered companies.

Subpart G—Company-Run Stress Test Requirements

252.141 Applicability.
252.142 Definitions.
252.143 Annual stress test.
252.144 Additional stress test for covered companies.
252.145 Methodologies and practices.
252.146 Required report to the Board of stress test results and related information.
252.147 Post-assessment actions by covered companies.
252.148 Publication of results by covered companies and over $10 billion companies.

Subpart H—Debt-to-Equity Limits for Certain Covered Companies

252.151 Definitions.
252.152 Debt-to-equity ratio limitation.

Subpart I—Early Remediation Framework

252.161 Definitions.
252.162 Remediation Actions.
252.163 Remediation triggering events.
252.164 Notice and remedies.

Subpart A—General Provisions

§ 252.1 Authority, purpose, applicability, and reservation of authority.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) under sections 165 and 166 of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–32, 12 U.S.C. 5365 and 5366); section 9 of the Federal Reserve Act (12 U.S.C. 321–338a); section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)); section 10(g) of the Home Owners' Loan Act, as amended (12 U.S.C. 1467a(g)); and sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b) and 1831p–1).

(b) *Purpose.* This part implements certain provisions of sections 165 and 166 of the Dodd-Frank Act (12 U.S.C. 5365 and 5366), which requires the Board to establish enhanced prudential standards for covered companies, as defined herein.

(c) *Applicability.* (1) *In general.* Except as otherwise provided in this part, a covered company is subject to the requirements of this part beginning on the first day of the fifth quarter following the date on which it became a covered company.

(2) *Initial applicability.* Except as provided in this part, a company that is a covered company on the effective date of this subpart is subject to the requirements of this subpart beginning on the first day of the fifth quarter following the effective date.

(3) *U.S. bank holding company subsidiaries of foreign banking organizations.* Except with respect to the liquidity requirements in subpart C, the risk management requirements of subpart E, and the debt-to-equity limits in subpart H, the requirements of this part will not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) until July 21, 2015.

(d) *Reservation of authority.* (1) *In general.* If the Board determines that compliance with the requirements of this part does not sufficiently mitigate the risks to U.S. financial stability posed by the failure or material financial distress of a covered company, the Board may require the covered company to be subject to additional or further enhanced prudential standards, including, but not limited to, additional capital or liquidity requirements, limits on exposures to single-counterparties, risk management requirements, stress tests, or other requirements or restrictions the Board deems necessary to carry out the purposes of this subpart or Title I of the Dodd-Frank Act.

(2) *Other supervisory authority.* Nothing in this part limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

(3) *Application of enhanced prudential standards to bank holding companies in general.* In order to preserve the safety and soundness of a bank holding company and thereby mitigate risks to the stability of the U.S. financial system, the Board may determine that a bank holding company that is not a covered company shall be subject to one or more of the standards established under this part based on the company's capital structure, size, complexity, risk profile, scope of operations, or financial condition and any other risk related factors that the Board deems appropriate.

Subpart B—Risk-Based Capital Requirements and Leverage Limits

§ 252.11 Applicability.

(a) *Applicability.* A nonbank covered company is subject to the requirements of sections 252.13(b)(1) and (2) on the later of the effective date of this subpart or 180 days following the date on which the Council determined that the company shall be supervised by the Board. A company the Council has determined shall be supervised by the Board on a date no less than 180 days before September 30 of a calendar year

must comply with the requirements of sections 252.13(b)(3) from September 30 of that calendar year and thereafter.

§ 252.12 Definitions.

For purposes of this subpart:

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(d) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this part unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(e) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(f) *Nonbank covered company* means any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

§ 252.13 Enhanced risk-based capital and leverage requirements.

(a) *Bank holding companies.* A covered company that is a bank holding company must comply with, and hold capital commensurate with the requirements of any regulations adopted by the Board relating to capital plans and stress tests.

(b) *Nonbank covered companies.* A nonbank covered company must:

(1) Calculate its minimum risk-based and leverage capital requirements as if it were a bank holding company in accordance with any minimum capital requirements established by the Board for bank holding companies, including 12 CFR part 225, appendix A (general risk-based capital rule), 12 CFR part 225, appendix D (leverage rule), 12 CFR part 225, appendix E (market risk rule), and 12 CFR part 225, appendix G (advanced approaches risk-based capital rule);

(2) Hold capital sufficient to meet (i) a tier 1 risk based capital ratio of 4 percent and a total risk-based capital ratio of 8 percent, as calculated according to the general risk-based capital rules, and (ii) a tier 1 leverage ratio of 4 percent as calculated under the leverage rule; [205] and

(3) Comply with, and hold capital commensurate with, the requirements of any regulations adopted by the Board relating to capital plans and stress tests as if the covered company were a bank holding company, including but not limited to section 225.8 of the Board's Regulation Y (12 CFR 225.8).

§ 252.14 Nonbank covered companies: reporting and enforcement.

(a) *Reporting.* Each nonbank financial company must report to the Board on a quarterly basis its risk-based capital and leverage ratios as calculated under section 252.13(b).

(b) *Notice of non-compliance.* A nonbank financial company must notify the Board immediately upon ascertaining that it has failed to meet its enhanced risk-based capital and leverage requirements under section 252.13(b).

[205] 12 CFR part 225, appendix D, section II.

Subpart C—Liquidity Requirements

§ 252.51 Definitions.

For purposes of this subpart:

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(d) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this subpart unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph

(3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(e) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(f) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(g) *Highly liquid assets* means:

(1) Cash;

(2) Securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored entity; and

(3) Any other asset that the covered company demonstrates to the satisfaction of the Federal Reserve:

(i) Has low credit risk and low market risk;

(ii) Is traded in an active secondary two-way market that has observable market prices, committed market makers, a large number of market participants, and a high trading volume; and

(iii) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity is impaired.

(h) *Liquidity* means, with respect to a covered company, the covered company's capacity to efficiently meet its expected and unexpected cash flows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the covered company.

(i) *Liquidity risk* means the risk that a covered company's financial condition or safety and soundness will be adversely affected by its inability or perceived inability to meet its cash and collateral obligations.

(j) *Publicly traded* means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

(k) *Risk committee* means the enterprise-wide risk committee established by a covered company's board of directors under section 252.126 of subpart E of this part.

(l) *Trading position* means a position that is held by a covered company for the purpose of short-term resale or with the intent of benefitting from actual or expected short-term price movements, or to lock-in arbitrage profits.

(m) *Two-way market* means a market with independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom.

(n) *Unencumbered* means, with respect to an asset, that:

(1) The asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien;

(2) The asset is not designated as a hedge on a trading position; and

(3) There are no legal or contractual restrictions on the ability of the covered company to promptly liquidate, sell, transfer, or assign the asset.

(o) *U.S. government agency* means an agency or instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

(p) *U.S. government-sponsored entity* means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

§ 252.52 Board of directors and risk committee responsibilities.

(a) *Oversight.* The covered company's board of directors (or the risk committee) must oversee the covered company's liquidity risk management processes, and must review and approve the liquidity risk management strategies, policies, and procedures established by senior management.

(b) *Actions.*

(1) *Liquidity risk tolerance.* (i) The board of directors must establish the covered company's liquidity risk tolerance at least annually. The liquidity risk tolerance is the acceptable level of liquidity risk the covered company may assume in connection with its operating strategies. In determining the covered company's liquidity risk tolerance, the board of directors must consider the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.

(ii) The board of directors must review information provided by senior management at least semi-annually to determine whether the covered company is managed in accordance with the established liquidity risk tolerance.

(2) *Business strategies and products.* (i) The risk committee or a designated subcommittee thereof must review and approve the liquidity costs, benefits, and risks of each significant new business line and each significant new product before the covered company implements the business line or offers the product. In connection with this review, the risk committee or a designated subcommittee thereof must consider whether the liquidity risk of the new business line or product under current conditions and under liquidity stress is within the covered company's established liquidity risk tolerance.

(ii) At least annually, the risk committee or designated subcommittee thereof must review approved significant business lines and products to determine whether each line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product continues to be within the covered company's established liquidity risk tolerance.

(3) *Contingency funding plan.* The board of directors must review and approve the contingency funding plan described in section 252.58 at least annually, and whenever the covered company materially revises the plan.

(4) *Other reviews.* (i) At least quarterly, the risk committee or designated subcommittee thereof must:

(A) Review the cash flow projections produced under section 252.55 of this subpart that use time periods in excess of 30-days to ensure that the covered company's liquidity risk is within the established liquidity risk tolerance;

(B) Review and approve liquidity stress testing described in section 252.56 of this subpart, including stress testing practices, methodologies, and assumptions. The risk committee or designated subcommittee thereof must also review and approve liquidity stress testing whenever the covered company materially revises its liquidity stress testing;

(C) Review liquidity stress testing results produced under section 252.56 of this subpart;

(D) Approve the size and composition of the liquidity buffer established under section 252.57 of this subpart;

(E) Review and approve the specific limits established under section 252.59 of this subpart and review the covered company's compliance with those limits; and

(F) Review liquidity risk management information necessary to identify, measure, monitor, and control liquidity risk and to comply with this subpart.

(ii) The risk committee or designated subcommittee thereof must periodically review the independent validation of the liquidity stress tests produced under section 252.56(c)(2)(ii) of this subpart.

(iii) The risk committee or designated subcommittee thereof must establish procedures governing the content of senior management reports on the liquidity risk profile of the covered company and other information described at section 252.53(b) of this subpart.

(c) *Frequency of reviews.* Paragraph (b) of this section establishes minimum requirements for the frequency of certain reviews and approvals. The board of directors (or the risk committee) must conduct more frequent reviews and approvals as market and idiosyncratic conditions warrant.

§ 252.53 Senior management responsibilities.

(a) Senior management of a covered company must establish and implement strategies, policies, and procedures for managing liquidity risk. This includes overseeing the development and implementation of liquidity risk measurement and reporting systems, cash flow projections, liquidity stress testing, liquidity buffer, contingency funding plan, specific limits, and monitoring procedures required under this subpart.

(b) Senior management must regularly report to the risk committee or designated subcommittee thereof on the liquidity risk profile of the covered company and must provide other relevant and necessary information to the board of directors (or risk committee) to facilitate its oversight of the liquidity risk management process.

§ 252.54 Independent review.

(a) The covered company must establish and maintain a review function, independent of management functions that execute funding, to evaluate its liquidity risk management.

(b) The independent review function must:

(1) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the covered company's liquidity risk management processes;

(2) Assess whether the covered company's liquidity risk management complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(3) Report statutory and regulatory noncompliance and other material liquidity risk management issues to the board of directors or the risk committee in writing for corrective action.

§ 252.55 Cash flow projections.

(a) *Requirement.* The covered company must produce comprehensive cash flow projections in accordance with the requirements of this section. The covered company must update short-term cash flow projections daily and must update long-term cash flow projections at least monthly.

(b) *Methodology.* The covered company must establish a robust methodology for making cash flow projections. The methodology must include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures.

(c) *Cash flow projections.* The covered company must produce comprehensive cash flow projections that:

(1) Project cash flows arising from assets, liabilities, and off-balance sheet exposures over short-term and long-term periods that are appropriate to the covered company's capital structure, risk profile, complexity, activities, size, and other risk related factors;

(2) Identify and quantify discrete and cumulative cash flow mismatches over these time periods;

(3) Include cash flows arising from contractual maturities, as well as cash flows from new business, funding renewals, customer options, and other potential events that may impact liquidity; and

(4) Provide sufficient detail to reflect the covered company's capital structure, risk profile, complexity, activities, size, and any other risk related factors that are appropriate. Such detail may include cash flow projections broken down by business line, legal entity, or jurisdiction, and cash flow projections that use more time periods than the minimum required under paragraph (c)(1) of this section.

§ 252.56 Liquidity stress testing.

(a) *Requirement.* (1) The covered company must regularly stress test its cash flow projections in accordance with the requirements of this section. Stress test analysis consists of identifying liquidity stress scenarios and assessing the effects of these scenarios on the covered company's cash flow and liquidity. The covered company must use the results of stress testing to determine the size of its liquidity buffer under section 252.57 of this subpart, and must incorporate the information generated by stress testing in the quantitative component of the contingency funding plan under section 252.58(b) of this subpart.

(2) The covered company must conduct stress testing in accordance with the requirements of this section at least monthly. The covered company must be able to perform stress testing more frequently and to vary underlying assumptions as conditions change or as required by the Federal Reserve due to deterioration in the company's financial condition, market conditions, or to address other supervisory concerns.

(b) *Stress testing requirements.*

(1) *Stress scenarios.* (i) Stress testing must incorporate a range of stress scenarios that may significantly impact the covered company's liquidity, taking into consideration the covered company's balance sheet exposures, off-balance sheet exposures, business lines, organizational structure, and other characteristics.

(ii) At a minimum, stress testing must incorporate separate stress scenarios to account for market stress, idiosyncratic stress, and combined market and idiosyncratic stresses.

(iii) The stress scenarios must address the potential impact of market disruptions on the covered company and must address the potential actions of other market participants experiencing liquidity stresses under the same market disruptions.

(iv) The stress scenarios must be forward-looking and must incorporate a range of potential changes in a covered company's activities, exposures, and risks, as well as changes to the broader economic and financial environment.

(v) The stress scenarios must use a variety of time horizons. At a minimum, these time horizons must include an overnight time horizon, a 30-day time horizon, 90-day time horizon, and a one-year time horizon.

(2) Stress testing must comprehensively address the covered company's activities, exposures, and risks, including off-balance sheet exposures.

(3) Stress testing must be tailored to, and provide sufficient detail to reflect, the covered company's capital structure, risk profile, complexity, activities, size, and any other risk related factors that are appropriate. This may require analyses by business line, legal entity, or jurisdiction, and stress scenarios that use more time horizons than the

minimum required under paragraph (b)(1)(v) of this section.

(4) A covered company must incorporate the following assumptions in its stress testing:

(i) For the first 30 days of a liquidity stress scenario, only highly liquid assets that are unencumbered may be used as cash flow sources to offset projected funding needs.

(ii) For time periods beyond the first 30 days of a liquidity stress scenario, highly liquid assets that are unencumbered and other appropriate funding sources may be used as cash flow sources to offset projected funding needs.

(iii) If an asset is used as a cash flow source to offset projected funding needs, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(iv) Throughout each stress test time horizon, assets used as sources of funding must be sufficiently diversified.

(c) *Process and systems requirements.* (1) The covered company must establish and maintain policies and procedures that outline its liquidity stress testing practices, methodologies and assumptions, detail the use of each stress test employed, and provide for the enhancement of stress testing practices as risks change and as techniques evolve.

(2) The covered company must have an effective system of control and oversight over the stress test function to ensure that:

(i) Each stress test is designed in accordance with the requirements of this section; and

(ii) The stress process and assumptions are validated. The validation function must be independent of functions that develop or design the liquidity stress testing, and independent of management functions that execute funding.

(3) The covered company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

§ 252.57 Liquidity buffer.

(a) A covered company must maintain a liquidity buffer of highly liquid assets that are unencumbered. The liquidity buffer must be sufficient to meet projected net cash outflows and the projected loss or impairment of existing funding sources for 30 days over a range of liquidity stress scenarios.

(b) The covered company must determine the size of its liquidity buffer requirement using the results of its liquidity stress testing under section 252.56 of this subpart, and must align the size of the buffer to the covered company's capital structure, risk profile, complexity, activities, size, and any other risk related factors that are appropriate, and established liquidity risk tolerance.

(c) In computing the amount of an asset included in the liquidity buffer, the covered company must discount the fair market value of the asset to reflect any credit risk and market volatility of the asset.

(d) The pool of unencumbered highly liquid assets included in the liquidity buffer must be sufficiently diversified.

§ 252.58 Contingency funding plan.

(a) *Contingency funding plan.* The covered company must establish and maintain a contingency funding plan that sets out the covered company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the covered company's capital structure, risk profile, complexity, activities, size, and any other risk related factors that are appropriate, and established liquidity risk tolerance. The covered company must update the contingency funding plan at least annually, and must update the plan when changes to market and idiosyncratic conditions warrant an update.

(b) *Components of the contingency funding plan.* The contingency funding plan must include the following components:

(1) *Quantitative Assessment.* The contingency funding plan must incorporate information generated by liquidity stress testing described in section 252.56. The stress tests are used to:

(i) Identify liquidity stress events that have a significant impact on the covered company's liquidity;

(ii) Assess the level and nature of impact on the covered company's liquidity that may occur during identified liquidity stress events;

(iii) Assess available funding sources and needs during the identified liquidity stress events; and

(iv) Identify alternative funding sources that may be used during the liquidity stress events.

(2) *Event management process.* The contingency funding plan must include an event management process that sets out the covered company's procedures for managing liquidity during identified liquidity stress events. This process must:

(i) Include an action plan that clearly describes the strategies the covered company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the covered company will use to access alternative funding sources;

(ii) Identify a liquidity stress event management team;

(iii) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, escalating the responses described in the action plan, decision-making during the identified liquidity stress events, and executing contingency measures identified in the action plan; and

(iv) Provide a mechanism that ensures effective reporting and communication within the covered company and with outside parties, including the Federal Reserve and other relevant supervisors, counterparties, and other stakeholders.

(3) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the covered company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors.

(4) *Testing.* The covered company must periodically test the components of the contingency funding plan to assess the plan's reliability during liquidity stress events.

(i) The covered company must test the operational elements of the contingency funding plan to ensure that the plan functions as intended. These tests must include operational simulations to test communications, coordination, and decision-making involving relevant managers, including managers at relevant legal entities within the corporate structure.

(ii) The covered company must periodically test the methods it will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

§ 252.59 Specific limits.

(a) *Required limits.* The covered company must establish and maintain limits on potential sources of liquidity risk including the following:

(1) Concentrations of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers;

(2) The amount of specified liabilities that mature within various time horizons; and

(3) Off-balance sheet exposures and other exposures that could create

funding needs during liquidity stress events.

(b) *Size of limits.* The size of each limit described in paragraph (a) of this section must reflect the covered company's capital structure, risk profile, complexity, activities, size, other appropriate risk related factors, and established liquidity risk tolerance.

§ 252.60 Monitoring.

(a) *Collateral monitoring requirements.* The covered company must establish and maintain procedures for monitoring assets that it has pledged as collateral for an obligation or position, and assets that are available to be pledged. These procedures must address the covered company's ability to:

(1) Calculate all of the covered company's collateral positions in a timely manner, including: (i) the value of assets pledged relative to the amount of security required under the contract governing the obligation for which the collateral was pledged; and (ii) unencumbered assets available to be pledged;

(2) Monitor the levels of available collateral by legal entity, jurisdiction, and currency exposure;

(3) Monitor shifts between intraday, overnight, and term pledging of collateral; and

(4) Track operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(b) *Legal entities, currencies and business lines.*

(1) The covered company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines.

(2) The covered company must maintain sufficient liquidity with respect to each significant legal entity in light of legal and regulatory restrictions on the transfer of liquidity between legal entities.

(c) *Intraday liquidity positions.* The covered company must establish and maintain procedures for monitoring intraday liquidity risk exposure. These procedures must address how the covered company will:

(1) Monitor and measure expected daily gross liquidity inflows and outflows;

(2) Manage and transfer collateral when necessary to obtain intraday credit;

(3) Identify and prioritize time-specific obligations so that the covered company can meet these obligations as expected;

(4) Settle less critical obligations as soon as possible;

(5) Control the issuance of credit to customers where necessary; and

(6) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the covered company's overall liquidity needs.

(d) *Monitoring of limits.* The covered company must monitor its compliance with all limits established and maintained under section 252.59 of this subpart.

§ 252.61 Documentation.

The covered company must adequately document all material aspects of its liquidity risk management processes and its compliance with the requirements of this subpart and submit all such documentation to the risk committee.

Subpart D—Single-Counterparty Credit Limits

§ 252.91 Applicability.

(a) *Applicability.* (1) *In general.* Except as otherwise provided in this subpart, a covered company is subject to the requirements of this subpart beginning on the first day of the fifth quarter following the date on which it became a covered company.

(2) *Initial applicability.* A company that is a covered company on the effective date of this subpart will be subject to the requirements of this subpart beginning on October 1, 2013. A company that becomes a covered company after the effective date of this part and before September 30, 2012 will be subject to the requirements of this subpart beginning on October 1, 2013.

§ 252.92 Definitions.

For purposes of this subpart:

(a) *Adjusted market value* means, with respect to any eligible collateral, the fair market value of the eligible collateral after application of the applicable haircut specified in Table 2 of this subpart for that type of eligible collateral.

(b) *Affiliate* means, with respect to a company, any company that controls, is controlled by, or is under common control with, the company.

(c) *Aggregate net credit exposure* means the sum of all net credit exposures of a covered company to a single counterparty.

(d) *Applicable accounting standards* means U.S. generally applicable accounting principles (GAAP), international financial reporting standards (IFRS), or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

(e) *Bank eligible investments* means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(f) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(g) *Capital stock and surplus* means with respect to a bank holding company, the sum of the following amounts in each case as reported by the bank holding company on the most recent FR Y–9C report, or with respect to a nonbank covered company, on the most recent regulatory report required by the Board:

(1) The company's total capital, as calculated under the capital adequacy guidelines applicable to that bank holding company under Regulation Y (12 CFR part 225) or nonbank covered company under this subpart; and

(2) The balance of the allowance for loan and lease losses of the bank holding company or nonbank covered company not included in tier 2 capital under the capital adequacy guidelines applicable to that bank holding company under Regulation Y (12 CFR part 225) or that nonbank covered company under this subpart.

(h) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(i) *Control.* A company *controls* another company if it (1) owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; (2) owns or controls 25 percent or more of the total equity of the company; or (3) consolidates the company for financial reporting purposes.

(j) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(k) *Counterparty* means

(1) With respect to a natural person, the person, and members of the person's immediate family;

(2) With respect to a company, the company and all of its subsidiaries, collectively;

(3) With respect to the United States, the United States and all of its agencies and instrumentalities (but not including any State or political subdivision of a State) collectively;

(4) With respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively; and

(5) With respect to a foreign sovereign entity, the foreign sovereign entity and all of its agencies, instrumentalities, and political subdivisions, collectively;

(l) *Covered company* means:

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company); and

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this subpart unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(m) *Credit derivative* means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

(n) *Credit transaction* means, with respect to a counterparty:

(1) Any extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding advised or other uncommitted lines of credit;

(2) Any repurchase or reverse repurchase agreement with the counterparty;

(3) Any securities lending or securities borrowing transaction with the counterparty;

(4) Any guarantee, acceptance, or letter of credit (including any confirmed letter of credit or standby letter of credit) issued on behalf of the counterparty;

(5) Any purchase of, or investment in, securities issued by the counterparty;

(6) Any credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty;

(7) Any credit exposure to the counterparty in connection with a credit derivative or equity derivative transaction between the covered company and a third party, the reference asset of which is an obligation or equity security of the counterparty; and

(8) Any transaction that is the functional equivalent of the above, and any similar transaction that the Board determines to be a credit transaction for purposes of this subpart.

(o) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(p) *Derivative transaction* means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(q) *Eligible collateral* means collateral in which the covered company has a perfected, first priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent) and is in the form of:

(1) Cash on deposit with the covered company (including cash held for the covered company by a third-party custodian or trustee);

(2) Debt securities (other than mortgage- or asset-backed securities) that are bank eligible investments;

(3) Equity securities that are publicly traded; or

(4) Convertible bonds that are publicly traded.

(r) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(1) The derivative contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(s) *Eligible equity derivative* means an equity-linked total return swap, provided that:

(1) The derivative contract has been confirmed by the counterparties;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(3) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

(t) *Eligible guarantee* means a guarantee from an eligible protection provider that:

(1) Is written and is either unconditional or the enforceability of the guarantee is contingent only to the extent it is dependent upon affirmative action on the part of the beneficiary of the guarantee or a third party (for example, servicing requirements);

(2) Covers all or a pro rata portion of all contractual payments of the obligor on the reference entity;

(3) Gives the beneficiary a direct claim against the protection provider;

(4) Is not unilaterally cancelable by the guarantor for reasons other than the breach of the contract by the beneficiary;

(5) Is legally enforceable against the guarantor in a jurisdiction where the guarantor has sufficient assets against which a judgment may be attached and enforced;

(6) Requires the guarantor to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference entity in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment; and

(7) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference entity.

(u) *Eligible protection provider* means:

(1) A sovereign entity;

(2) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(3) A Federal Home Loan Bank;

(4) The Federal Agricultural Mortgage Corporation;

(5) A depository institution;

(6) A bank holding company;

(7) A savings and loan holding company (as defined in 12 U.S.C. 1467a);

(8) A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*);

(9) An insurance company that is subject to the supervision by a State insurance regulator;

(10) A foreign banking organization;

(11) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(12) A qualifying central counterparty.

(v) *Equity derivative* means an equity-linked swap, purchased equity-linked option, forward equity-linked contract, or any other instrument linked to equities that gives rise to similar counterparty credit risks.

(w) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(x) *Gross credit exposure* means, with respect to any credit transaction, the credit exposure of the covered company before adjusting for the effect of qualifying master netting agreements, eligible collateral, eligible guarantees, eligible credit derivatives and eligible equity derivatives.

(y) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(z) *Major counterparty* is any

(1) Major covered company and all of its subsidiaries, collectively; and

(2) Any foreign banking organization (and all of its subsidiaries, collectively) that has total consolidated assets equal to or greater than $500 billion determined based on the foreign banking organization's total consolidated assets in the most recent year, for annual filers, or the average of the four most recent quarters, for quarterly filers, as reported on the foreign banking organization's Capital and Asset Reports for Foreign Banking Organizations (Federal Reserve Form FR Y–7Q).

(aa) *Major covered company* is any

(1) Covered company that is a bank holding company and that has total consolidated assets equal to or greater than $500 billion determined based on the average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's FR Y–9C; and

(2) Nonbank covered company.

(bb) *Net credit exposure* means, with respect to any credit transaction, the gross credit exposure of a covered company calculated under section 252.94, as adjusted in accordance with section 252.95.

(cc) *Nonbank covered company* means any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(dd) *Publicly traded* means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

(ee) *Qualifying central counterparty* means an entity that

(1) Facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts;

(2) Requires all participants in its arrangements to be fully collateralized on a daily basis; and

(3) Is subject to effective oversight by a national supervisory authority.

(ff) *Qualifying master netting agreement* means a legally enforceable bilateral agreement such that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding of the counterparty;

(2) The agreement provides the covered company the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdiction;

(3) The covered company has conducted sufficient legal review to conclude with a well-founded basis (and has maintained sufficient written documentation of that legal review) that the agreement meeting the requirements of paragraph (2) of this definition and that in the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdiction;

(4) The covered company establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to

satisfy the requirements of this definition; and

(5) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter is a net creditor under the agreement).[206]

(gg) *Short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(hh) *Sovereign entity* means a central government (including the U.S. government) or an agency, department, ministry, or central bank.

(ii) *State* means any State, territory or possession of the United States, and the District of Columbia.

(jj) *Subsidiary* of a specified company means a company that is directly or indirectly controlled by the specified company.

(kk) *Total capital* means qualifying total capital as defined in 12 CFR part 225, appendix A or total qualifying capital as defined in 12 CFR part 225, appendix G, as applicable, or any successor regulation thereto.

§ 252.93 Credit exposure limit.

(a) *General limit on aggregate net credit exposure.* No covered company shall, together with its subsidiaries, have an aggregate net credit exposure to any unaffiliated counterparty that exceeds 25 percent of the consolidated capital stock and surplus of the covered company.

(b) *Major covered company limits on aggregate net credit exposure.* No major covered company shall, together with its subsidiaries, have aggregate net credit exposure to any unaffiliated counterparty that is a major counterparty that exceeds 10 percent of the consolidated capital stock and surplus of the major covered company.

§ 252.94 Gross credit exposure.

(a) *Calculation of gross credit exposure.* Under this subpart, exposures of a covered company to a counterparty include the exposures of its subsidiaries to the counterparty. The amount of gross credit exposure of a covered company to a counterparty with respect to credit transactions is, in the case of:

(1) Loans by a covered company to the counterparty and leases in which the covered company is the lessor and the counterparty is the lessee, equal to the amount owed by the counterparty to the covered company under the transaction.

(2) Debt securities held by the covered company that are issued by the counterparty, equal to:

(i) The greater of the amortized purchase price or market value, for trading and available for sale securities, and

(ii) The amortized purchase price, for securities held to maturity.

(3) Equity securities held by the covered company that are issued by the counterparty, equal to the greater of the purchase price or market value.

(4) Repurchase agreements, equal to:

(i) The market value of securities transferred by the covered company to the counterparty; plus

(ii) The amount in paragraph (4)(i) multiplied by the collateral haircut in Table 2 applicable to the securities transferred by the covered company to the counterparty.

(5) Reverse repurchase agreements, equal to the amount of cash transferred by the covered company to the counterparty.

(6) Securities borrowing transactions, equal to the amount of cash collateral plus the market value of securities collateral transferred by the covered company to the counterparty.

(7) Securities lending transactions, equal to:

(i) The market value of securities lent by the covered company to the counterparty; plus

(ii) The amount in paragraph (7)(i) multiplied by the collateral haircut in Table 2 applicable to the securities lent by the covered company to the counterparty.

(8) Committed credit lines extended by a covered company to a counterparty, equal to the face amount of the credit line.

(9) Guarantees and letters of credit issued by a covered company on behalf of a counterparty, equal to the lesser of the face amount or the maximum potential loss to the covered company on the transaction.

(10) Derivative transactions between the covered company and the counterparty not subject to a qualifying master netting agreement, in an amount equal to the sum of (i) the current exposure of the derivatives contract equal to the greater of the mark-to-market value of the derivative contract or zero and (ii) the potential future exposure of the derivatives contract, calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor, set forth in Table 1.

(11) Derivative transactions between the covered company and the counterparty subject to a qualifying master netting agreement, in an amount equal to the exposure at default amount calculated under 12 CFR part 225, appendix G, § 32(c)(6).

(12) Credit or equity derivative transactions between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of the counterparty, equal to the lesser of the face amount of the transaction or the maximum potential loss to the covered company on the transaction.

TABLE 1—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate	Credit (bank-eligible investment reference obligor) [3]	Credit (non-bank-eligible reference obligor)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12

[206] The Board considers the following jurisdictions to be relevant for a qualifying master netting agreement: The jurisdiction in which the counterparty is chartered or equivalent location in the case of non-corporate entities, and if a branch of a counterparty is involved, then also the jurisdiction in which the branch is located; the jurisdiction that governs the individual transactions covered by the agreement; and the jurisdiction that governs the agreement.

TABLE 1—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [1]—Continued

Remaining maturity [2]	Interest rate	Foreign exchange rate	Credit (bank-eligible investment reference obligor) [3]	Credit (non-bank-eligible reference obligor)	Equity	Precious metals (except gold)	Other
Greater than 5 years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A company must use the column labeled "Credit (bank-eligible investment reference obligor)" for a credit derivative whose reference obligor has an outstanding unsecured debt security that is a bank eligible investment. A company must use the column labeled "Credit (non-bank-eligible investment reference obligor)" for all other credit derivatives.

(b) *Attribution rule.* A covered company must treat any of its transactions with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.

§ 252.95 Net credit exposure.

(a) *Calculation of initial net credit exposure for securities financing transactions.*

(1) *Repurchase and reverse repurchase transactions.* For repurchase and reverse repurchase transactions with a counterparty that are subject to a bilateral netting agreement with that counterparty, a covered company may use the net credit exposure associated with the netting agreement.

(2) *Securities lending and borrowing transactions.* For a securities lending and borrowing transactions with a counterparty that are subject to a bilateral netting agreement with that counterparty, a covered company may use the net credit exposure associated with the netting agreement.

(b) *Market value adjustments.* In computing its net credit exposure to a counterparty for any credit transaction (including securities financing transactions), a covered company may reduce its gross credit exposure (or as applicable, net credit exposure for securities financing transactions calculated under section 252.95(a)) on the transaction by the adjusted market value of any eligible collateral, provided that:

(1) The covered company includes the adjusted market value of the eligible collateral when calculating its gross credit exposure to the issuer of the collateral;

(2) The collateral used to adjust the covered company's gross credit exposure to a counterparty cannot be used to adjust the covered company's gross credit exposure to any other counterparty; and

(3) In no event will the covered company's gross credit exposure to the issuer of collateral be in excess of its gross credit exposure to the counterparty on the credit transaction.

(c) *Unused portion of certain extensions of credit.* (1) In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a covered company may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the covered company does not have any legal obligation to advance additional funds under the extension of credit, until the counterparty provides the amount of adjusted market value of collateral required with respect to the entire used portion of the extension of credit.

(2) To qualify for this reduction, the credit contract must specify that any used portion of the credit extension must be fully secured by collateral that is (i) cash, (ii) obligations of the United States or its agencies, or (iii) obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board.

(d) *Eligible guarantees.* In calculating net credit exposure to a counterparty for a credit transaction, a covered company must reduce its gross credit exposure to the counterparty by the amount of any eligible guarantees from an eligible protection provider that covers the transaction, provided that:

(1) The covered company includes the amount of the eligible guarantees when calculating its gross credit exposure to the eligible protection provider; and

(2) In no event will the covered company's gross credit exposure to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee.

(e) *Eligible credit and equity derivatives.* In calculating net credit exposure to a counterparty for a credit transaction, a covered company must reduce its gross credit exposure to the counterparty by the notional amount of any eligible credit or equity derivative from an eligible protection provider that references the counterparty, as applicable, provided that:

(1) The covered company includes the face amount of the eligible credit and equity derivative when calculating its gross credit exposure to the eligible protection provider; and

(2) In no event will the covered company's gross credit exposure to an eligible protection provider with respect to an eligible credit or equity derivative be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible credit or equity derivative.

(f) *Other eligible hedges.* In calculating net credit exposure to a counterparty for a credit transaction, a covered company may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt or equity security.

TABLE 2—COLLATERAL HAIRCUTS

[Sovereign entities]

	Residual maturity	Haircut without currency mismatch [207]
OECD Country Risk Classification [208] 0–1	≤ 1 year	0.005
	>1 year, ≤ 5 years	0.02
	> 5 years	0.04
OECD Country Risk Classification 2–3	≤ 1 year	0.01
	>1 year, ≤ 5 years	0.03
	> 5 years	0.06

CORPORATE AND MUNICIPAL BONDS THAT ARE BANK-ELIGIBLE INVESTMENTS

	Residual maturity for debt securities	Haircut without currency mismatch
All	≤ 1 year	0.02
All	>1 year, ≤ 5 years	0.06
All	> 5 years	0.12

OTHER ELIGIBLE COLLATERAL

Main index [209] equities (including convertible bonds)	0.15.
Other publicly traded equities (including convertible bonds)	0.25.
Mutual funds	Highest haircut applicable to any security in which the fund can invest.
Cash collateral held	0.

§ 252.96 Compliance.

(a) *Scope of compliance.* Acovered company must comply with the requirements of this section on a daily basis at the end of each business day and submit on a monthly basis a report demonstrating its daily compliance.

(b) *Noncompliance.* Except as otherwise provided in this section, if a covered company is not in compliance with this subpart with respect to a counterparty solely due to the circumstances specified in this section 252.96, the covered company will not be subject to enforcement actions for a period of 90 days (or such other period determined by the Board to be appropriate to preserve the safety and soundness of the covered company or U.S. financial stability) if the company uses reasonable efforts to return to compliance with this subpart during this period. The covered company may not engage in any additional credit transactions with such a counterparty in contravention of this rule during the compliance period, except in cases where the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the covered company or U.S. financial stability. In granting approval for such a special temporary credit exposure limit, the Board will consider the following:

(1) A decrease in the covered company's capital stock and surplus.

(2) The merger of the covered company with another covered company.

(3) A merger of two unaffiliated counterparties.

(4) Any other circumstance the Board determines is appropriate.

The Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards as set forth in this paragraph.

§ 252.97 Exemptions.

(a) *Exempted exposure categories.* The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(1) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the United States and its agencies.

(2) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board.

(3) Intraday credit exposure to a counterparty.

(4) Any transaction that the Board exempts if the Board finds that such exemption is in the public interest and is consistent with the purpose of this subsection.

(b) *Exemption for Federal Home Loan Banks.* For purposes of this subpart, a covered company does not include any Federal Home Loan Bank.

Subpart E—Risk Management

§ 252.125 Definitions.

For purposes of this subpart:

(a) *Bank holding company* is defined as in section 2 of the Bank Holding

[207] In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an addition 8 percent haircut will apply.

[208] OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits Arrangement.

[209] Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the covered company can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Chief risk officer* means a management official of a covered company who fulfills the responsibilities described in section 252.126(d) of this subpart.

(c) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(d) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(e) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this subpart unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(f) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(g) *Enterprise-wide risk committee* means a committee of a covered company's or over $10 billion bank holding company's board of directors that oversees the risk management practices of such company's worldwide operations.

(h) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(i) *Independent director* means

(1) In the case of a covered company or over $10 billion bank holding company that has a class of securities outstanding that is traded on a national securities exchange, a member of the board such company who:

(i) Is not an officer or employee of the company and has not been an officer or employee of the company during the previous three years; and

(ii) Is not a member of the immediate family, as defined in section 225.41(a)(3) of the Board's Regulation Y (12 CFR 225.41(a)(3)), of a person who is, or has been within the last three years, an executive officer of the company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(iii) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K, 17 CFR 229.407(a).

(2) In the case of a director of a covered company or over $10 billion bank holding company that does not have a class of securities outstanding that is traded on a national securities exchange, a member of the board of directors of such company who:

(i) Meets the requirements of paragraphs (1)(i) and (ii) of this section; and

(ii) The company demonstrates to the satisfaction of the Federal Reserve would qualify as an independent director under the listing standards of a national securities exchange if the company were publicly traded on a national securities exchange.

(j) *National securities exchange* means any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(k) *Publicly traded* means traded on:

(1) A national securities exchange; or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

(l) *Risk management expertise* means

(1) An understanding of risk management principles and practices with respect to banking holding companies or depository institutions, or, if applicable, nonbank financial companies, and the ability to assess the general application of such principles and practices; and

(2) Experience developing and applying risk management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations or, if applicable, nonbank financial companies.

(m) *Over $10 billion bank holding company* means any bank holding company (other than a foreign banking organization) that is not a covered company, and that:

(1) Has $10 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(2) Once an over $10 billion bank holding company meets the requirements described in paragraph (1), the company shall remain an over $10 billion bank holding company for purposes of this part unless and until the company has less than $10 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(3) Nothing in paragraph (2) shall preclude a company from becoming an over $10 billion bank holding company pursuant to paragraph (1).

(4) A bank holding that has ceased to be an over $10 billion bank holding company under paragraph (2) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be an over $10 billion bank holding company.

§ 252.126 Establishment of risk committee and appointment of chief risk officer.

(a) *Risk committee.* Each covered company and each publicly-traded over $10 billion bank holding company, shall maintain an enterprise-wide risk committee consisting of members of its board of directors, and, for each covered company, that satisfies the requirements of section 252.126(d).

(b) *Structure of risk committee.* An enterprise-wide risk committee shall:

(1) Have a formal, written charter, approved by the company's board of directors;

(2) Have at least one member with risk management expertise that is commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors;

(3) Be chaired by an independent director;

(4) Meet with an appropriate frequency and as needed, and fully document and maintain records of its proceedings, including risk management decisions;

(5) In addition, in the case of a covered company:

(i) Not be housed within another committee or be part of a joint committee;

(ii) Report directly to the covered company's board of directors; and

(iii) Receive and review regular reports from the covered company's chief risk officer.

(c) *Responsibilities of risk committee.* A risk committee shall document, review and approve the enterprise-wide risk management practices of the company. Specifically, the risk committee shall oversee the operation of, on an enterprise wide-basis, an appropriate risk management framework commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. A company's risk management framework shall include:

(1) Risk limitations appropriate to each business line of the company;

(2) Appropriate policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the enterprise as a whole;

(3) Processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on an enterprise-wide basis;

(4) Monitoring of compliance with the company's risk limit structure and policies and procedures relating to risk management governance, practices, and risk controls across the enterprise;

(5) Effective and timely implementation of corrective actions to address risk management deficiencies;

(6) Specification of management and employees' authority and independence to carry out risk management responsibilities; and

(7) Integration of risk management and control objectives in management goals and the company's compensation structure.

(d) *Chief risk officer.* A covered company shall employ a chief risk officer who:

(1) Has risk management expertise that is commensurate with the company's capital structure, risk profile, complexity, activities, size, and other risk-related factors that are appropriate;

(2) Is appropriately compensated and incentivized to provide an objective assessment of the risks taken by the company;

(3) Reports directly to both the risk committee and chief executive officer of the company; and

(4) Directly oversees the following responsibilities on an enterprise-wide basis:

(i) Allocating delegated risk limits and monitoring compliance with such limits;

(ii) Implementation of and ongoing compliance with, appropriate policies and procedures relating to risk management governance, practices, and risk controls and monitoring compliance with such policies and procedures;

(iii) Developing appropriate processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on an enterprise-wide basis;

(iv) Managing risk exposures and risk controls within the parameters of the company's risk control framework; and

(v) Monitoring and testing of the company's risk controls;

(vi) Reporting risk management deficiencies and emerging risks to the enterprise-wide risk committee; and

(vii) Ensuring that risk management deficiencies are effectively resolved in a timely manner.

Subpart F—Supervisory Stress Test Requirements

§ 252.131 Applicability.

(a) *Applicability.* (1) *In general.* A bank holding company that becomes a covered company no less than 90 days before September 30 of a calendar year must comply with the requirements of this subpart from September 30 of that calendar year and thereafter. A company the Council has determined shall be supervised by the Board on a date no less than 180 days before September 30 of a calendar year must comply with the requirements of this subpart from September 30 of that calendar year and thereafter.

(2) *Initial applicability.* A bank holding company that is a covered company on the effective date of this subpart must immediately comply with the requirements, including timing of required submissions to the Board, of this subpart.

§ 252.132 Definitions.

For purposes of this subpart:

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(d) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered

company for purposes of this subpart unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(e) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(f) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(g) *Planning horizon* means the period of time over which stress test projections must extend. The planning horizon cannot be less than nine quarters.

(h) *Publicly traded* means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

(i) *Scenarios* are a set of economic and financial conditions that the Board publishes for the use in the supervisory stress tests annually, including baseline, adverse, and severely adverse.

§ 252.133 Annual analysis conducted by the Board.

(a) *In general.* The Board, in coordination with the appropriate primary financial regulatory agencies, as defined in section 2(12) of Dodd-Frank Act (12 U.S.C. 5301(12)), and the Federal Insurance Office, will, on an annual basis, conduct an analysis of the capital, on a total consolidated basis and taking into account all relevant exposures and activities of each covered company to evaluate the ability of the covered company to absorb losses in adverse economic and financial conditions. The analysis will include the projected net income, losses, and pro forma, post-stress capital levels and ratios for the covered company and use the analytical techniques that the Board determines are appropriate to identify, measure, and monitor risks of the covered company and to the financial stability of the United States.

(b) *Economic and financial scenarios related to analyses.* The Board will conduct its analysis under section 252.133(a) using a minimum of three different sets of economic and financial conditions (scenarios), including baseline, adverse, and severely adverse conditions. The Board will notify covered companies of the conditions the Board will apply in advance of conducting the analysis.

§ 252.134 Data and information required to be submitted in support of the Board's analyses.

(a) *Regular submissions.* The Board will require each covered company to submit the data, on a consolidated basis, that the Board determines is necessary for it to estimate relevant pro forma estimates discussed in 252.133(a), of the covered company over a period of at least 9 calendar quarters under baseline, adverse, and severely adverse scenarios, or other such conditions as determined appropriate by the Board, including:

(1) Information related to the covered company's on- and off-balance sheet exposures, including in some cases information on individual items (such as loans and securities) held by the company, and including exposures in the covered company's trading portfolio, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions in the trading portfolio to changes in market prices and interest rates.

(2) Information to assist the Board in estimating the sensitivity of the covered company's revenues and expenses to changes in economic and financial conditions.

(3) Information to assist the Board in estimating the likely evolution of the covered company's balance sheet (such as the composition of its loan and securities portfolios) and allowance for loan losses, in response to changes in economic and financial conditions.

(b) *Additional submissions required by the Board.* The Board may require a covered company to submit any other information on a consolidated basis the Board deems necessary in order to:

(1) Ensure that the Board has sufficient information to conduct its analysis under this subpart; and

(2) Derive robust projections of a company's losses, pre-provision net revenue, allowance for loan losses, and future pro forma capital positions under the baseline, adverse, and severely adverse scenarios, or other such conditions as determined appropriate by the Board.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.135 Review of the Board's analysis; publication of summary results.

(a) *Review of results.* Based on the results of the analysis conducted under this subpart, the Board will evaluate each covered company to determine whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses and continue to function as a credit intermediary as a result of adverse and severely adverse economic and financial market conditions.

(b) *Communication of results to covered companies.* The Board will convey to each covered company the results of the Board's analyses of such covered company within a reasonable period of time.

(c) *Publication of results by the Board.* Within a reasonable period of time after completing the analyses of the covered companies under this subpart, the Board will publish a summary of the results of such analyses.

§ 252.136 Post-assessment actions by covered companies.

(a) *In general.* Each covered company shall take the results of the analysis conducted by the Board under this subpart into account in making changes, as appropriate, to the covered company's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans of the covered company for recovery; and for improving overall risk management.

(b) *Resolution plan updates.* Each covered company shall make such updates to its resolution plan as the

Board determines appropriate, based on the results of its analyses of the covered company under this subpart, within 90 days of the Board publishing the summary results of its analyses.

Subpart G—Company-Run Stress Test Requirements

§ 252.141 Applicability.

(a) *Applicability.* (1) *In general.* (i) A bank holding company that becomes a covered company, or a bank holding company, a state member bank, or except as provided in paragraph (a)(2) of this section, a savings and loan holding company becomes an over $10 billion company no less than 90 days before September 30 of a calendar year must comply with the requirements of this subpart from September 30 of that calendar year and thereafter. A company that the Council has determined shall be supervised by the Board on a date no less than 180 days before September 30 of a calendar year must comply with the requirements of this subpart from September 30 of that calendar year and thereafter.

(ii) A bank holding company that becomes a covered company no less than 90 days before March 31 of a calendar year must comply with the requirements of this subpart from March 31 of that calendar year and thereafter. A company that the Council has determined shall be supervised by the Board on a date no less than 180 days before March 31 of a calendar year must comply with the requirements of this subpart from March 31 of that calendar year and thereafter.

(2) *Initial applicability.* (i) *In general.* A bank holding company that is a covered company or an over $10 billion company on the effective date of this subpart must immediately comply with the requirements, including timing of required submissions to the Board, of this subpart.

(ii) *Savings and loan holding companies.* A savings and loan holding company that is an over $10 billion company, before or after the effective date of this subpart, would not be subject to the proposed requirements, including timing of required submissions to the Board, until savings and loan holding companies are subject to minimum risk-based capital and leverage requirements.

§ 252.142 Definitions.

For purposes of this subpart:

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(d) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this subpart unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(e) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(f) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(g) *Planning horizon* means the period of time over which stress test projections must extend. The planning horizon cannot be less than nine quarters.

(h) *Publicly traded* means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

(i) *Over $10 billion company* means any:

(1) Bank holding company (other than a foreign banking organization) that is not a covered company and that has more than $10 billion in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's FR Y–9C; or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters;

(2) Savings and loan holding company that is not a covered company and that has more than $10 billion in total consolidated assets, as determined based on:

(i) The average of the savings and loan holding company's total consolidated assets in the four most recent quarters as reported quarterly on the savings and loan holding company's relevant regulatory report; or

(ii) The average of the savings and loan holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the savings and loan holding company's relevant regulatory reports, if the savings and loan holding company has not filed such a report for

each of the most recent four quarters; and

(3) State member bank that has more than $10 billion in total consolidated assets, as determined based on:

(i) The average of the state member bank's total consolidated assets in the four most recent quarters as reported quarterly on the state member bank's Consolidated Report of Condition and Income (Call Report); or

(ii) The average of the state member bank's total consolidated assets in the most recent consecutive quarters as reported quarterly on the state member bank's Call Report, if the state member bank has not filed a Call Report for each of the most recent four quarters.

(4) Once a company or bank meets the requirements described in paragraphs (1), (2), or (3), the company shall remain an over $10 billion company for purposes of this part unless and until the company has $10 billion or less in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs, the savings and loan holding company's four most recent relevant regulatory reports, or the bank's four most recent Call Reports.

(5) Nothing in paragraph (2) shall preclude a company from becoming an over $10 billion company pursuant to paragraph (1).

(6) A company or bank that has ceased to be an over $10 billion company under paragraphs (1), (2), or (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be an over $10 billion company.

(j) *Scenarios* are sets of economic and financial conditions used in the companies' stress tests, including baseline, adverse, and severely adverse.

(k) *State member bank* has the same meaning as in section 208.2(g) of the Board's Regulation H (12 CFR 208.2(g)).

(l) *Stress test* is a process to assess the potential impact on a covered company or an over $10 billion company of economic and financial conditions (scenarios) on the consolidated earnings, losses and capital of the company over a set planning horizon, taking into account the current condition of the company and the company's risks, exposures, strategies, and activities.

§ 252.143 Annual stress test.

(a) *In general.*

(1) Each covered company and each over $10 billion company shall complete an annual stress test of itself based on data of the covered company or the over $10 billion company as of September 30 of that calendar year, except for data related to the covered company's trading and counterparty exposures for which the Board will communicate the required as of date in the fourth quarter of each year.

(2) The stress test shall be conducted in accordance with this section and the methodologies and practices described in section 252.145.

(b) *Scenarios provided by the Board.* In conducting its annual stress tests under this section, each covered company and each over $10 billion company must use scenarios provided by the Board that reflect a minimum of three sets of economic and financial conditions, including a baseline, adverse, and severely adverse scenario. In advance of these stress tests, the Board will provide to all covered companies and over $10 billion companies a description of the baseline, adverse, and severely adverse scenarios that each covered company and each over $10 billion company shall use to conduct its annual stress tests under this subpart.

§ 252.144 Additional stress test for covered companies.

(a) *Additional stress test requirement.*

(1) Each covered company must complete an additional stress test each year based on data of that company as of March 31 of that calendar year except for data related to the covered company's trading and counterparty exposures for which the Board will communicate the required as of date in the fourth quarter of each year.

(2) The stress test shall be conducted in accordance with this section and the methodologies and practices described in section 252.145.

(b) *Scenarios related to additional stress tests.*

(1) *In general.* Each company subject to a stress test under this section 252.144 shall develop and employ scenarios reflecting a minimum of three sets of economic and financial conditions, including a baseline, adverse, and severely adverse scenario, or such additional conditions as the Board determines appropriate, in conducting each stress test required under this paragraph.

§ 252.145 Methodologies and practices.

(a) *Potential impact on capital.*

(1) In conducting a stress test under section 252.143 and section 252.144, each covered company and each over $10 billion company shall calculate how each of the following are impacted during each quarter of the stress test planning horizon, for each scenario:

(i) Potential losses, pre-provision net revenues, allowance for loan losses, and future pro forma capital positions over the planning horizon; and

(ii) Capital levels and capital ratios, including regulatory and any other capital ratios specified by the Board.

(b) *Controls and oversight of stress testing processes.*

(1) Each covered company and each over $10 billion company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress testing processes used by the covered company or over $10 billion company are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered company's or over $10 billion company's stress testing practices and methodologies, validation and use of stress tests results, and processes for updating the company's stress testing practices consistent with relevant supervisory guidance. Policies of covered companies must describe processes for scenario development for the additional stress test required under section 252.144.

(2) The board of directors and senior management of each covered company and each over $10 billion company shall approve and annually review the controls, oversight, and documentation, including policies and procedures, of the covered company or the over $10 billion company established pursuant to this subpart.

§ 252.146 Required report to the Board of stress test results and related information.

(a) *Report required for stress tests.* On or before January 5 of each year, each covered company and each over $10 billion company must report the results of the stress test required under section 252.143 to the Board in accordance with section 252.146(b). On or before July 5 of each year, each covered company must report the results of the stress test required under section 252.144 to the Board, in accordance with section 252.146(b).

(b) *Content of report for both annual and additional stress tests.* Each covered company and each over $10 billion company must file a report in the manner and form established by the Board.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.147 Post-assessment actions by covered companies.

(a) Each covered company and each over $10 billion company shall take the results of the stress tests conducted under section 252.143 and, if applicable, section 252.144, into account in making changes, as appropriate, to the covered company's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans for recovery and resolution; and to improve overall risk management.

§ 252.148 Publication of results by covered companies and over $10 billion companies.

(a) *Public disclosure of results required for stress tests of covered companies and of over $10 billion companies.* Within 90 days of submitting a report for its required stress test under section 252.143 and section 252.144, as applicable, a covered company and an over $10 billion company shall disclose publicly a summary of the results of the stress tests required under section 252.143 and section 252.144, as applicable.

(b) *Information to be disclosed in the summary.* The information disclosed by each covered company and each over $10 billion company, as applicable, shall, at a minimum, include—

(1) A description of the types of risks being included in the stress test;

(2) For each covered company, a high-level description of scenarios developed by the company under section 252.144(b), including key variables used (such as GDP, unemployment rate, housing prices);

(3) A general description of the methodologies employed to estimate losses, pre-provision net revenue, allowance for loan losses, and changes in capital positions over the planning horizon; and

(4) Aggregate losses, pre-provision net revenue, allowance for loan losses, net income, and pro forma capital levels and capital ratios (including regulatory and any other capital ratios specified by the Board) over the planning horizon, under each scenario.

Subpart H—Debt-to-Equity Limits for Certain Covered Companies

§ 252.151 Definitions.

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(d) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this part unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(e) *Debt-to-equity ratio* means the ratio of a company's total liabilities to a company's total equity capital less goodwill.

(f) *Debt* and *equity* have the same meaning as ''total liabilities'' and ''total equity capital'', respectively, as reported:

(1) In the case of a nonbank financial company supervised by the Board, in a report of financial condition filed pursuant to section 161(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5361(a)), or otherwise as required by the Board.

(2) In the case of a bank holding company (other than a foreign banking organization), on the Federal Reserve's Form FR Y–9C (Consolidated Financial Statements for Bank Holding Companies) or any successor form.

(g) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(h) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(i) *Publicly traded* means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

§ 252.152 Debt-to-equity ratio limitation.

(a) *Notice and maximum debt-to-equity ratio requirement.* Beginning no later than 180 days after receiving written notice from the Council that it has made a determination, pursuant to section 165(j) of the Dodd-Frank Act that a covered company poses a grave threat to the financial stability of the United States (identified company) and that the imposition of a debt to equity requirement is necessary to mitigate such risk, an identified company shall achieve and maintain a debt to equity ratio of no more than 15-to-1.

(b) *Extension.* The Board may, upon request by an identified company, extend the time period for compliance established under paragraph (a) for up to two additional periods of 90 days each, if the Board determines that the identified company has made good faith efforts to comply with the debt to equity ratio requirement and that each extension would be in the public interest.

(c) *Termination.* The debt to equity ratio requirement in paragraph (a) shall cease to apply to an identified company as of the date it receives notice from the Council of a determination, based on the factors described in subsections (a) and (b) of section 113 of the Dodd-Frank Act (12 U.S.C. 5323), that the company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt to equity requirement is no longer necessary.

Subpart I—Early Remediation Framework

§ 252.161 Definitions.

For purposes of this subpart:

(a) *Affiliate* means, with respect to a company, any company that controls, is controlled by, or is under common control with, the company.

(b) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(c) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Board determines to be in substance a distribution of capital.

(d) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(e) *Control* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

(f) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(g) *Covered company* means

(1) Any company organized under the laws of the United States or any State that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (nonbank covered company).

(2) Any bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on:

(i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (the Federal Reserve's FR Y–9C (FR Y–9C)); or

(ii) The average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters.

(3) Once a covered company meets the requirements described in paragraph (2), the company shall remain a covered company for purposes of this part unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(4) Nothing in paragraph (3) shall preclude a company from becoming a covered company pursuant to paragraph (2).

(5) A bank holding that has ceased to be a covered company under paragraph (3) is not subject to the requirements of this subpart beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a covered company.

(h) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(i) *Foreign banking organization* means any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(j) *Net income means:*

(1) For a bank holding company (other than a foreign banking organization), the net income as reported on line 14 schedule HI of the company's FR Y–9C report.

(2) For a nonbank covered company that is publicly traded, the net income as reported on the company's quarterly financial statements.

(3) For a nonbank covered company that is not publicly traded, net income as reported on the company's most recent audited financial statement.

(k) *Planning horizon* means the period of time over which stress test projections must extend. The planning horizon cannot be less than nine quarters.

(l) *Publicly traded* means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom.

(m) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with 12 CFR part 225, appendix A or 12 CFR part 225, appendix G, as applicable, or any successor regulation thereto.

(n) *Senior executive officer* of a covered company means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, or head of a major business line.

(o) *Severely adverse scenario* has the same meaning as defined in the context of Subpart F of this part.

(p) *Tier 1 capital* means tier 1 capital as defined in 12 CFR part 225, appendix A or 12 CFR part 225, appendix G, as applicable, or any successor regulation thereto.

(q) *Tier 1 common risk-based capital ratio* means the ratio of tier 1 capital less the non-common elements of tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities, to risk-weighted assets.

(r) *Tier 1 leverage ratio* means the ratio of tier 1 capital to total assets as defined in 12 CFR part 225 appendix D, or any successor regulation thereto.

(s) *Tier 1 risk-based capital ratio* means the ratio of tier 1 capital to risk-weighted assets, as calculated in accordance with 12 CFR part 225, appendix A or 12 CFR part 225, appendix G, as applicable, or any successor regulation thereto.

(t) *Total capital* means qualifying total capital as defined in 12 CFR part 225, appendix A or total qualifying capital as defined in 12 CFR part 225, appendix G, as applicable, or any successor regulation thereto.

(u) *Total assets* means:

(1) For a bank holding company (other than a foreign banking organization), total consolidated assets as reported quarterly on the bank holding company's FR Y–9C.

(2) For a nonbank covered company that is publicly traded, total consolidated assets as reported nonbank covered company's quarterly financial statements.

(3) For a nonbank covered company that is not publicly traded, total consolidated assets as determined based on the company's audited financial statements.

(v) *Total risk-based capital ratio* means the ratio of total capital to risk-weighted assets, as calculated in accordance with 12 CFR part 225, appendix A or 12 CFR part 225, appendix G, as applicable, or any successor regulation thereto.

§ 252.162 Remediation Actions.

(a) *Level 1 remediation (heightened supervisory review).* Under level 1 remediation, the Board shall conduct a targeted supervisory review of a covered company to evaluate whether the covered company is experiencing financial distress or material risk management weaknesses such that further decline of the covered company is probable and that the covered company should be subject to initial remediation (level 2 remediation).

(1) The review required by this section 252.162(a) must be completed within 30 days of the company's entrance into level one remediation.

(2) If, upon completion of the review, the Board determines that the covered company is experiencing financial distress or material risk management weaknesses such that further decline of the covered company is probable, the covered company shall be subject to initial remediation (level 2 remediation).

(b) *Level 2 remediation (initial remediation).* A covered company subject to level 2 remediation:

(1) Shall not make capital distributions during any calendar quarter in an amount that exceeds 50 percent of the average of the covered company's net income in the preceding two calendar quarters.

(2) Shall not:

(i) Permit its daily average total assets during any calendar quarter to exceed its daily average total assets during the preceding calendar quarter by more than 5 percent; or

(ii) Permit its daily average total assets during any calendar year to exceed its daily average total assets during the preceding calendar year by more than 5 percent; or

(iii) Permit its daily average risk-weighted assets during any calendar quarter to exceed its daily average risk-weighted assets during the preceding calendar quarter by more than 5 percent;

(iv) Permit its daily average risk-weighted assets during any calendar year to exceed its daily average risk-weighted assets during the preceding calendar year by more than 5 percent;

(v) Directly or indirectly acquire any controlling interest in any company (including an insured depository institution, establish or acquire any office or other place of business, or engage in any new line of business), without the prior approval the Board.

(3) Shall be required to enter into a non-public memorandum of understanding, or other enforcement action acceptable to the Board.

(4) In addition, may be subject to the following additional limitations imposed by the Board:

(i) Limitations or conditions on the conduct or activities of the company or any of its affiliates that the Board finds to be appropriate and consistent with the purposes of Title I of the Dodd-Frank Act.

(c) *Level 3 remediation (recovery).* A covered company subject to level 3 remediation:

(1) May not make any capital distribution.

(2) Shall not:

(i) Permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter; or

(ii) Permit its average total risk-weighted assets during any calendar quarter to exceed its average total risk-weighted assets during the preceding calendar quarter; or

(iii) Directly or indirectly acquire any interest in any company (including any insured depository institution), establish or acquire any office (or other place of business), or engage in any new line of business;

(3) Must enter into a written agreement or other form of enforcement action with the Board that specifies that the covered company must raise additional capital and take other appropriate actions to improve its capital adequacy.

(i) If a covered company fails to satisfy the requirements of such a written agreement, the covered company may be required to divest assets identified by the Board as contributing to the covered company's financial decline or posing substantial risk of contributing to further financial decline of the covered company.

(4) Shall not increase the compensation of, or pay any bonus to, its senior executive officers or directors.

(5) May also be required by the Board to:

(i) Conduct a new election for the institution's board of directors;

(ii) Dismiss from office any director or senior executive officer of the covered company who had held office for more than 180 days immediately prior to receipt of notice pursuant to section 252.164 that the covered company is subject to level 3 remediation; or

(iii) Employ qualified senior executive officers approved by the Board.

(6) The Board may place restrictions on a covered company engaging in transactions with its affiliates if it is subject to level 3 remediation.

(d) *Level 4 remediation (resolution assessment).* The Board shall consider whether the covered company poses a risk to the stability of the U.S. financial system. If the Board determines, based on the covered company's financial decline and the risk posed to U.S. financial stability by the failure of the covered company or other relevant factors, that the covered company should be placed into receivership under Title II of the Dodd-Frank Act, the Board shall make a written recommendation that the covered company be placed in resolution under Title II of the Dodd-Frank Act.

§ 252.163 Remediation triggering events.

(a) *Capital and leverage.*

(1) *Level 1 remediation triggering events.* A covered company that has a total risk-based capital ratio of 10.0 percent or greater, a tier 1 risk-based capital ratio of 6.0 percent or greater, and a tier 1 leverage ratio of 5.0 percent or greater, is subject to level 1 remediation (heightened supervisory review) if the Board determines that the covered company's capital structure, capital planning processes, or the amount of capital it holds is not commensurate with the level and nature of the risks to which it is exposed.

(2) *Level 2 remediation triggering events.* A covered company is subject to level 2 remediation (initial remediation) if it has a total risk-based capital ratio of less than 10.0 percent and greater than or equal to 8.0 percent, a tier 1 risk-based capital ratio of less than 6.0 percent and greater than or equal to 4.0 percent or a tier 1 leverage ratio of less than 5.0 percent and greater than or equal to 4.0 percent.

(3) *Level 3 remediation triggering events.* A covered company is subject to level 3 remediation (recovery) if:

(i) For two complete consecutive quarters, the covered company has a

total risk-based capital ratio of less than 10.0 percent, a tier 1 risk-based capital ratio of less than 6.0 percent or a tier 1 leverage ratio of less than 5.0 percent; or

(ii) The covered company has a total risk-based capital ratio of less than 8.0 percent and greater than or equal to 6.0 percent, a tier 1 risk-based capital ratio of less than 4.0 percent and greater than or equal to 3.0 percent or a tier 1 leverage ratio of less than 4.0 percent and greater than or equal to 3.0 percent.

(iii) *Level 4 remediation triggering events.* A covered company is subject to level 4 remediation (resolution assessment) if it has a total risk-based capital ratio of less than 6.0 percent, a tier 1 risk-based capital ratio of less than 3.0 percent or a tier 1 leverage ratio of less than 3.0 percent.

(b) *Stress Tests.*

(1) *Level 1 remedial triggering events.* A covered company is subject to level 1 remediation if it is not in compliance with any regulations adopted by the Board relating to capital plans pursuant to 12 CFR 225.8 and stress tests pursuant to Subparts F and G of this part.

(2) *Level 2 remediation triggering events.* A covered company is subject to level 2 remediation (initial remediation) if its results under the severely adverse scenario in any quarter of the planning horizon produced pursuant to a stress test executed pursuant to Subpart F of this part reflect a tier 1 common risk-based capital ratio of less than 5.0 percent and greater than or equal to 3.0 percent.

(3) *Level 3 remediation triggering events.* A covered company is subject to level 3 remediation (recovery) if its results under the severely adverse scenario in any quarter of the planning horizon produced pursuant to a stress test executed pursuant to Subpart F of this part reflect a tier 1 common risk-based capital ratio of less than 3.0 percent.

(c) *Risk Management.*

(1) *Level 1 remedial triggering events.* A covered company is subject to level 1 remediation if it has manifested signs of weakness in meeting the enhanced risk management and risk committee requirements under Subpart E of this part.

(2) *Level 2 remediation triggering events.* A covered company is subject to level 2 remediation if it has demonstrated multiple deficiencies in meeting the enhanced risk management or risk committee requirements under Subpart E of this part.

(3) *Level 3 remediation triggering events.* A covered company is subject to level 3 remediation if it is in substantial noncompliance with the enhanced risk management and risk committee requirements under Subpart E of this part.

(d) *Liquidity.*

(1) *Level 1 remedial triggering events.* A covered company is subject to level 1 remediation if it has manifested signs of weakness in meeting the enhanced liquidity risk management requirements under Subpart C.

(2) *Level 2 remediation triggering events.* A covered company is subject to level 2 remediation if it has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management requirements under Subpart C.

(3) *Level 3 remediation triggering events.* A covered company is subject to level 3 remediation if it is in substantial noncompliance with the enhanced liquidity risk management requirements under Subpart C.

(e) *Market indicators.*

(1) *Definitions.*

(i) *Market indicator* means an indicator based on publicly available market data that is identified in the annual indicator list, as specified by the Board.

(ii) *Indicator list* means a list of the market indicators and market indicator thresholds that will be used during a defined period, as specified by the Board.

(iii) *Breach period* means the number of consecutive business days, as specified by the Board, over which the median value of a market indicator must exceed the market indicator threshold to trigger remediation.

(iv) *Market indicator threshold* means, with respect to each market indicator described on the indicator list, the level, as specified by the Board, indicating that a covered company is experiencing financial distress or material risk management weaknesses such that further decline of the covered company is probable based on historic measures of data.

(2) The Board shall publish for comment annually, or less frequently as appropriate, the indicator list, market indicator thresholds, and breach period that will be used during a twelve-month period.

(3) A covered company shall be subject to level 1 remediation upon receipt of a notice indicating that the Board has found that, with respect to the covered company, any single market indicator has exceeded the market indicator threshold for the breach period.

(f) *Measurement and timing of remediation action events.*

(1) *Capital.* For the purposes of this subpart, the capital of a covered company is deemed to have been calculated as of the most recent of the following:

(i) The FR Y–9C report;

(ii) Calculations of capital by the covered company submitted to the Board, pursuant to a Board request to the covered company to calculate its ratios;

(iii) A final inspection report is delivered to the covered company that includes capital ratios calculated more recently than the most recent FR Y–9C report submitted by the covered company to the Board.

(2) *Stress tests.* For purposes of this paragraph, the ratios calculated under the supervisory stress test apply as of the date the Board's report of the test results is transmitted to the covered company pursuant to section 252.135(b) of Subpart F.

§ 252.164 Notice and remedies.

(a) *Notice to covered company of remediation action event.* If the Board ascertains that a remediation triggering event set forth in section 252.163 has occurred with respect to a covered company, the Board shall notify the covered company of the event and the remediation action under section 252.162 applicable to the covered company as a result of the event.

(b) *Notification of Change in Status.* If a covered company becomes aware of (i) one or more triggering events set forth in section 252.163; or (ii) a change in condition that it believes should result in a change in the remediation provisions to which it is subject, such covered company must provide notice to the Board within 5 business days, identifying the nature of the triggering event or change in circumstances.

(c) *Termination of remediation action.* A covered company subject to a remediation action under this subpart shall remain subject to the remediation action until the Board provides written notice to the covered company that its financial condition or risk management no longer warrants application of the requirement.

By order of the Board of Governors of the Federal Reserve System, December 22, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–33364 Filed 1–4–12; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Two Distinct Population Segments of Broad-Snouted Caiman as Endangered or Threatened and a Special Rule; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2010–0089; 4500030115; 1113F116]

RIN 1018–AT56

Endangered and Threatened Wildlife and Plants; Listing Two Distinct Population Segments of Broad-Snouted Caiman as Endangered or Threatened and a Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the broad-snouted caiman in Argentina from endangered to threatened in the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (ESA or Act). As part of this proposed rule, we would establish two distinct population segments (DPSs) of the broad-snouted caiman (*Caiman latirostris*): a DPS in Argentina and a DPS that would encompass Bolivia, Brazil, Paraguay, and Uruguay. This second DPS would remain listed as endangered under the Act. We are proposing this action under the Act based on the best available data indicating that the Argentine population of the broad-snouted caiman no longer meets the definition of endangered under the Act. Intense management of the species in Argentina has brought the Argentine DPS to the point where a change in status is appropriate. This also serves as our 5-year review.

We also propose that the Argentine population of broad-snouted caiman be included in the special rule for trade in caiman species. Inclusion in this special rule would allow U.S. commerce in skins, other parts, and products of this species originating from Argentina, and reexport of such specimens originating in Argentina, if certain conditions are met prior to exportation to the United States. We are seeking information, data, and comments from the public on this proposed rule. This proposed rule to reclassify the broad-snouted caiman in Argentina to threatened under the Act also constitutes our warranted 12-month finding (status review) on a petition.

DATES: To ensure that we are able to consider your comments on this proposed rule, they must be received or postmarked on or before *March 5, 2012.* We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** below by February 21, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket number FWS–R9–ES–2010–0089 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–ES–2010–0089; 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 comments by email or fax. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief; Branch of Foreign Species, Endangered Species Program; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 420; Arlington, VA 22203, U.S.A. Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service at 800–877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments

We received eight comments from the public on the 90-day finding (73 FR 33968, published on June 16, 2008). We received comments from foreign government agencies, the scientific community, and the reptile product industry. We received scientific literature about this species from members of the IUCN Crocodile Specialist Group. This literature provided additional information about the distribution, abundance, and conservation status of the species. The comments and information we received have been considered and incorporated into this proposed rule to reclassify the broad-snouted caiman.

We intend that any final action resulting from this proposed rule is based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we request comments and information from government agencies, the scientific community, industry, and other interested parties concerning this proposed rule. The comments that will be most useful and likely to influence our decisions are those supported by scientific data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) New biological, trade, or other relevant information and data concerning any threat (or lack thereof) to the broad-snouted caiman, particularly whether there is information that indicates the species no longer meets the definition of endangered in any part of its range.

(2) New information and data on whether or not climate change is a threat to the broad-snouted caiman, what regional climate change models are available, and whether they are reliable and credible to use as a step-down model for assessing the effects of climate change on the species and its habitat.

(3) The location of any additional populations of broad-snouted caiman.

(4) New information concerning the range, distribution, and population size and population trends of the broad-snouted caiman in the wild.

(5) New information on the current or planned activities within the geographic range of the broad-snouted caiman that may impact or benefit the species.

(6) New information concerning captive-breeding operations in Argentina, Bolivia, Brazil, Paraguay, and Uruguay.

(7) New information and data on the broad-snouted caiman in Argentina, Bolivia, Brazil, Paraguay, and Uruguay that would enhance our analysis of whether or not these two populations qualify as a DPS under the Act (16 U.S.C. 1531 *et seq.*), and whether or not these populations warrant continued protection under the Act.

(8) Information concerning the status and results of monitoring actions for the broad-snouted caiman, including those implemented under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The information available emphasizes field studies and species management in Argentina, with little direct information on the species in the other range countries (Bolivia, Brazil, Paraguay, and Uruguay). This species is primarily being monitored in Argentina, and we were unable to find additional information or only able to locate a small amount of information regarding the broad-snouted caiman in its other range countries. We are seeking information and data on the status of the

species throughout its range, particularly in Bolivia, Brazil, Paraguay, and Uruguay as part of this proposed rule.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that a determination 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.''

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. Please note that comments posted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-deliver a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on *http://www.regulations.gov.*

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R9–ES–2010–0089, which is the docket number for this rulemaking. Then click on the Search button.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the U.S. Fish and Wildlife Service's Endangered Species Program located in our Headquarters office (see the **FOR FURTHER INFORMATION CONTACT** section).

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.

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposed rule, if requested. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above under **ADDRESSES**. We must receive requests for public hearings in writing at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. 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** at least 15 days before the first hearing.

Previous Federal Actions

We listed this species as endangered on June 14, 1976 (41 FR 24062), in response to a petition we received in 1975 from the Fund for Animals, requesting that the Service list all species that were included in Appendix I of CITES (See additional discussion in CITES section.) as endangered under the Act. In 2007, we received a petition from the Government of Argentina, dated November 5, 2007, requesting that we reclassify the broad-snouted caiman in Argentina from endangered to threatened. The Argentine population of broad-snouted caiman has been listed on Appendix II of CITES since 1997. The broad-snouted caiman is still listed in Appendix I of CITES in Bolivia, Brazil, Paraguay, and Uruguay. With this petition, the Government of Argentina requested reclassification of the species from endangered to threatened in that country only. The petition contained detailed information about the natural history and biology of the broad-snouted caiman including the species' current status and distribution in Argentina. The Government of Argentina cited reasons for the reclassification such as the broad-snouted caiman populations in Argentina are healthy, habitat remains plentiful, caiman ranching programs in Argentina have proven successful (wild populations are increasing), and broad-snouted caiman production and harvest is increasing in Argentina.

The reclassification of the species under the Act would allow for commercial U.S. imports of broad-snouted caiman originating from Argentina to occur. Because the petition from the Government of Argentina was for reclassification of the Argentine population only, the Service must first consider whether the population of Argentina qualifies as a distinct vertebrate population segment (DPS) under the Act. (See discussion in Distinct Population Segment section.). We then evaluate the entire species to determine if a change in status under the Act is warranted based on any new information since the species was listed under the Act. The DPS policy requires FWS to determine whether or not a vertebrate population is discrete and significant; and the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened). If it qualifies, the policy requires a status determination to determine if the population is endangered or threatened.

On June 16, 2008, the Service published in the **Federal Register** a 90-day finding (73 FR 33968) on the petition, stating that the petition provided substantial information to indicate that the requested action (to reclassify the Argentine population of the broad-snouted caiman) may be warranted. In that finding, we announced that we were initiating a status review of the species as required under section 4(b)(3)(A) of the Act, and that we were seeking comments on the petitioned action, as well as information on the status of the species, particularly in Argentina. The comment period closed on September 15, 2008. During the comment period, we received scientific literature about this species from members of the International Union for Conservation of Nature (IUCN) Crocodile Specialist Group (CSG), and researchers in South America, particularly in Argentina. This literature provided additional information about the distribution, abundance, and conservation status of the species, particularly in Argentina. The comments and new information have been considered and incorporated into this proposed rule to reclassify the

Argentine population of the broad-snouted caiman.

Background

The primary purpose of the Act is to prevent animal and plant species' endangerment and extinction. The Act requires the Service to identify species that meet the Act's definitions of endangered and threatened species, to add those species to the Federal Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12, respectively), and to plan and implement conservation measures to improve their status to the point at which they no longer need the protections of the Act. When that protection is no longer needed, we take steps to remove (delist) the species from the Act. If a species is listed as endangered, we may first reclassify it to threatened status as an intermediate step before its eventual removal from the Federal Lists of Endangered and Threatened Wildlife and Plants; however, reclassification to threatened status is not required prior to removal. Section 3 of the Act provides the following definitions that are relevant to this rule: *Endangered species* means any species which is in danger of extinction throughout all or a significant portion of its range; *Threatened species* means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. *Species* includes any subspecies of fish or wildlife or plants, and any DPS of any species of vertebrate fish or wildlife which interbreeds when mature.

When an endangered species (or DPS) has recovered to the point where it is no longer currently in danger of extinction throughout all or a significant portion of its range, but is likely to become so in the foreseeable future, it is appropriate to reclassify that species (or DPS) to threatened. The broad-snouted caiman was listed as endangered in 1976. However, recent information indicates that the Argentine population has increased since the time of the original listing.

Technical Corrections

This proposed rule would correct errors in 50 CFR 17.11 as follows: The table at 50 CFR 17.11(h) does not currently list Bolivia in the historic range of the broad-snouted caiman. This proposed rule corrects the ''Historic Range'' entry to include Bolivia. In addition, we propose to correct errors in the entries for three other caiman species: brown caiman, common caiman, and yacare caiman. The entries for these species in the ''Special Rules'' column direct readers to 50 CFR 17.42(g); however, the special rule for all of these species is at 50 CFR 17.42(c).

Five-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. A 5-year review is a periodic process conducted to ensure that the classification of a listed species is appropriate. Section 4(c)(2)(B) requires that we determine: (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. It is based on the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any such information that has become available since the original listing of this species. This serves as our 5-year review of this species.

Species Description

The broad-snouted caiman is a medium-sized crocodilian with a body length usually no more than 2 meters (m) (6.6 feet (ft)), and has the proportionally broadest snout of any crocodile (Verdade *et al.* 2010, p. 18). It is found generally in lagoons, rivers, creeks, marshes, ponds, and mangroves in river systems of northeast Argentina, southeast Bolivia, Paraguay, and northern Uruguay (Borteiro *et al.* 2006, p. 97; Verdade *et al.* 2010, p. 18).

According to Imhof (unpublished 2006), approximately 60 percent of the species' range is in Brazil, 30 percent is in Argentina, seven percent is in Paraguay, and three percent is in Bolivia. The percentage of its range in Uruguay is unknown. Broad-snouted caiman populations are on the Atlantic coast, connected through the Paraná and São Francisco River systems of northeast Argentina, southeast Bolivia, Paraguay, and northeast Uruguay. The São Francisco River is 2,914 km (1,811 mi) in length.

The broad-snouted caiman exhibits greater climatic tolerance than other caiman species (Verdade and Piña 2006). The southernmost limit of the distribution of the broad-snouted caiman is northern Argentina (Jenkins *et al.* 2006), where it is found in the provinces of Chaco, Corrientes, Entre Ríos, Formosa, Jujuy, Misiones, Salta, Santa Fe, and Santiago del Estero. In Argentina, 80 percent of the Argentine distribution of the population occurs in the Province of Santa Fe. Here, the species is found primarily in the floodplain along the Paraná River, the Salado river watershed, and the Saladillos watershed (Larriera 1995, pp. 221–230).

This species is primarily found at altitudes up to 100 m (328 ft) above sea level (Borteiro *et al.* 2006, p. 99). The broad-snouted caiman exhibits a high degree of flexibility in its habitat preferences. It is an opportunistic feeder and prefers shallow, vegetated water. It generally prefers shallow aquatic environments with abundant vegetation. In some areas, the broad-snouted caiman is sympatric (occurs in overlapping geographical areas) with the yacare caiman (*Caiman yacare*), but the broad-snouted caiman is usually found in quieter, more heavily vegetated waters (Medem 1983, Scott *et al.* 1990). *C. yacare* prefers large rivers with adjacent marshes (Scott *et al.* 1990, pp. 43–51). Like many crocodilians, the broad-snouted caiman can be found in temporary bodies of water and manmade habitats, such as isolated cattle or agricultural stock ponds, livestock watering holes, and drainage ditches or areas of runoff water. It can be found in flooded forested areas in years of intense rains usually within 2,000 m (6,562 ft) from bodies of water (Larriera *et al.* 2008, p. 151).

The reproductive cycle of this species is seasonal. Mating occurs in the spring (October through December), when polygynous males (males who breed with more than one female) establish territories. When laying eggs, this species constructs a mound out of vegetation, and it deposits its eggs in the center of the mound. This process is called ''mound-nesting.'' Another characteristic of this species is that it exhibits communal nesting (several females laying eggs in the same nest). Partially divided nest chambers, each with normal clutch sizes, and nests with unusually large clutches (129 eggs) have been observed in this species which is indicative of communal nesting (Larriera 2002). Clutch sizes range between 18 to 50 eggs, with females typically laying between 30 and 40 eggs (Micucci and Waller 1995). Egg laying occurs during the wet summer season, which occurs from December through February (Verdade 1998, pp. 18–19). Young hatch at the end of fall and early winter (February–April) (Micucci and Waller 1995, p. 81).

This species is an opportunistic feeder. The young feed on insects and small arthropods. As hatchlings grow, their diet becomes primarily aquatic mollusks and crustaceans, and then

adults primarily feed on fish (Micucci and Waller 1995, pp. 81–112).

CITES

The broad-snouted caiman was listed in Appendix I of CITES on July 1, 1975. CITES Appendix I includes species that are ''threatened with extinction which are or may be affected by trade.'' Species listed under Appendix I may not be traded for primarily commercial purposes. These protections were put in place because the species had suffered substantial population declines throughout its range due to habitat destruction and overexploitation through the commercial crocodilian skin trade.

The Argentine population was transferred to Appendix II (which allows for commercial trade) in 1997. CITES Appendix II includes species that are less vulnerable to extinction and that ''although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.'' Management activities in Argentina were reviewed by the CITES Parties prior to transferring this population from Appendix I to Appendix II. The review included assessments of population status, determination of sustainable harvest quotas (and approval of ranching programs), and the control of the illegal harvest. Management regulations imposed after harvest included the tagging of skins and issuance of permits to satisfy the requirements for Appendix-II species. For a more in-depth discussion on CITES, please see the *International Trade and Regulation under CITES* section under *Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.*

Trade

Beginning in the 1940s, the broad-snouted caiman was hunted commercially for its leather, which is considered to be higher quality than that of other caiman species (Verdade *et al.* 2010, p. 19). Prior to being protected by CITES, thousands of broad-snouted caiman skins were exported from its range countries, which led to the listing of the species in Appendix I of CITES in 1975 (Verdade 1998, pp. 18–19, Larriera 2003, unpaginated). In 1990, ''Projecto Yacaré'' (''Caiman Project'') was implemented in Argentina based on a concept of conservation through sustainable use of broad-snouted caiman. The objective of the program was to improve the status of the population in two ways: by creating incentives for landowners and by increasing public awareness in the local communities to encourage the increase of caiman populations. Another objective was to conserve natural wetlands on which caimans depend (Larriera *et al.* 2008a, pp. 143–145). As of 2008, four ranching programs were operating in Argentina (Larriera *et al.* 2008), producing a total of approximately 12,000 skins per year (Verdade *et al.* 2010, p. 19). As of 2010, there were seven ranching programs registered with the government of Argentina. These programs also reintroduce captive-raised individuals to the wild. Three of the programs function on an educational basis, with no commercial production. These educational ranching operations are in Entre Ríos, Chaco, and Corrientes Provinces. Two of the commercial ranching programs are in Formosa; the other two are in Corrientes and Santa Fe Provinces. In 2010, there were 7,768 hatchlings produced in Argentina (Larriera 2010b, p. 1).

Conservation Status

The broad-snouted caiman is currently listed as endangered throughout its range under the ESA and received protections under the ESA on June 14, 1976 (41 FR 24062). With respect to CITES, this species was placed in Appendix I of CITES due to severe exploitation for international trade and habitat destruction. Because the Argentine broad-snouted caiman population was moved to Appendix II of CITES in 1997, commercial international trade is allowed, subject to several restrictions, for specimens, parts, and products originating in Argentina. The broad-snouted caiman is presently listed as endangered in its entirety under the Act (41 FR 24062; June 14, 1976), and importation into the United States of endangered species is prohibited under the Act with certain exceptions. IUCN classifies this species as ''least concern'' (*http://www.iucnredlist.org,* accessed November 8, 2010). However, IUCN rankings do not confer any actual protection or management.

Status in Range Countries and Population Estimates

In part because broad-snouted caiman habitat tends to be heavily vegetated and is difficult to access for humans, actual numbers of the species have been difficult to document; some researchers believe that the size of the population has historically been underestimated (Larriera and Imhof 2000, pp. 311–313). The imprecision is reflected in the global wild population estimate of between 250,000 and 500,000 individuals (*http://www.flmnh.ufl.edu/cnhc/csp_clat.htm,* accessed January 18, 2011).

It is difficult to accurately obtain population numbers for crocodiles due to variables such as water temperature, the nature of their behavior of disappearing underwater in response to certain types of disturbance, their respective visibility based on water depths, and their ability to migrate based on drought or flooding (Magnusson 1980, pp. 393–394; Bayliss 1987, p. 158; Graham 1988, p. 74; Pacheco 1996, p. 44). An early journal article described ''night counts'' as a mechanism for surveying American alligators, which live in habitat similar to that of broad-snouted caiman (Wood *et al.* 1986, p. 263) and exhibit similar characteristics. This paper indicated that ''the accuracy of night count indices is only 20–25 percent of true population means'' and referred to previous research conducted by Taylor and Neal (1984, pp. 316–317). Night count surveys use spotlights to detect caiman eyes. Although night counts are not entirely precise, they are very often used as a method of surveying crocodile species.

As an example of the difficulty in accurately obtaining population numbers for crocodiles, a review of crocodile ranching programs conducted for CITES by the IUCN Crocodile Specialist Group (CSG) in 2004 found that only three Parties (one of which was Argentina) to CITES attempted to estimate what proportion of the total wild production was being harvested under their ranching programs (Jenkins *et al.* 2006, p. 35). These estimates were based on production estimates which have wide variances and largely unknown accuracy. However, this report indicated that the easiest data to obtain and report to track population trends are those linked to the operation of the ranching programs (the method used by Argentina), data such as numbers of eggs collected from the wild. The eggs in Argentina's program are collected from known nest locations in the wild and are an indication of caiman density. This is why we use the information reported from Argentina's egg harvest as the best available information of population trend. The IUCN–CSG report also indicated that results probably indicate deficiencies in reporting rather than any declines of conservation significance in wild populations. The CSG recommended field data to verify this assertion, some of which has been collected over the past few years. However, recent surveys (Siroski 2004, 2006; Micucci *et al.* 2007;

Piña *et al.* 2008) have found broad-snouted caiman in sampled populations at densities comparable to the non-threatened American alligator (Wood *et al.* 1985, p. 271). In Argentina, recent densities of broad-snouted caiman ranged between 5 and 238 caiman per kilometer (km), and almost 70 sites were surveyed.

The map below illustrates the distribution of the species. Below is the best available information regarding the status of the species in each country.

Figure 1. Distribution of broad-snouted caiman. Courtesy of Piña *et al.* 2009.

Argentina

In Argentina, the broad-snouted caiman is found in nine provinces (Formosa, Santa Fe, Misiones, Corrientes, Entre Rios, Chaco, Santiago del Estero, Salta, and Jujuy). According to Imhof (unpublished 2006), approximately 30 percent of the species' range is in Argentina. Argentina has large areas of intact, although altered habitat with healthy populations (Verdade 1998, pp. 18–19; Piña *et al.* 2009). For example, broad-snouted caiman is thought to inhabit 2,400 of 2,700 water bodies (Piña *et al,* 2008, p. 4) in the Salta Province in Argentina. Surveys conducted in 2007 and 2008 indicated that broad-snouted caiman habitat in Salta Province is about 3,650 km² (1,409 mi²). These surveys found broad-snouted caiman densities had increased to between 20 and 120 caiman per km in 2009; up from 2 to 8 caiman per km in 1990 when Argentina's management program of broad-snouted caiman first began (Siroski and Larriera 2010, pers. comm.). These densities are within the normal range for crocodile species. In Argentina, this species has been observed in a variety of habitats and waterways, including rivers near waterfalls such as Iguazú, and freshwater creeks with rocky bottoms (Micucci and Waller 1995, pp. 81–110). In the Province of Santa Fe, the species is found primarily in the floodplain along the Paraná River, the Salado river watershed, and the Saladillos watershed (Larriera 1995). Its nesting areas reflect the adaptability of this species to a variety of habitats. Nests have been found along dikes or levees, shallow lagoons, still and slow-moving waters in rivers and channels, artificial ponds, and on small hills in wetlands (Larriera 1995, pp. 221–230). Nests have also been found in mature chaco forests of open or closed canopy as far as 300–2,000 m (984–6,562 ft) from water (Larriera 1995, pp. 221–230; Larriera *et al.* 2008, p. 151).

Since management and monitoring of the Argentine population began, population estimates for Argentina have indicated an upward trend. This has been achieved through an organized ranching program and reintroduction of hatchlings into the wild (See Factors B and D discussion below). Through this program, a significant increase in egg collection and harvest has occurred in the wild; over 30,000 hatchlings from eggs collected have been released into

the wild since the program began. Surveys conducted between 1991 and 1992 indicated an average density of 12.2 individuals per km. Later surveys conducted during the 1999–2000 season indicated that in the Iberá Reserve, Corrientes Province, the density had increased to 32.4 individuals per km (Waller 2003 in Piña *et al.* 2010, p. 4). Night counts found an increase of less than 1 caiman per km when the program began, to almost 10 caiman per km in 2000, and over 4 caiman per kilometer in 2006 and 2007 (Larriera 2008c, p. 2). This decrease in density during 2006–2007 was attributed to drought (Larriera 2008c, p. 3); however, natural fluctuations such as this often occur in wild populations (Woodward 2010, p. 2). Caiman populations, like most other crocodilian populations, can be adversely affected by droughts. Most crocodilians and prey species suffer short term declines during these conditions but readily respond to wetter conditions. Overall, egg harvest increased 750 percent between 1992 and 2007 (Larriera 2008c, p. 2). This increase in egg production was attributed in part to caiman being released through this program and reaching sexual maturity (Larriera 2008c, p. 3). Additional surveys revealed densities found within its range recorded in Table 1.

TABLE 1—DENSITIES OF BROAD-SNOUTED CAIMAN OBSERVED DURING POPULATION COUNTS

Country/province	Years	Number of localities	Range of caiman densities	Source
Argentina/Formosa	2007–2008	11	22 to 238 per km	Piña *et al.* (2008).
Argentina/Corrientes	2007–2008	10	5 to 125 per km	Piña *et al.* (2008).
Argentina/Salta	2007–2008	39	3 to 5 caiman per lagoon	Piña *et al.* (2008).
Argentina/Sante Fe	2007–2008	**	4 per km*	Larriera *et al.* (2008).
Argentina/Santa Fe	2002	7	6 to 200 per km	Larriera and Imhoff (2004).
Bolivia/Pilcomayo River Basin, Tarija	1998	6	3 to 58 per km	Llobet-Querejazu (1998).
Bolivia/Tarija Department	2004–2005	54	6.17 per km	Aparicio and Rios (2008).
Uruguay	2001–2004	36	3.5 per km	Borteiro *et al.* (2008).
Brazil/São Francisco River Basin	2006–2007	64	Presence in 44 percent of areas surveyed.	Filogonio *et al.* (2009).

* Recent caiman counts suggest that populations declined somewhat during 2002–2003 and 2007–2008 (Micucci *et al.* 2007; Larriera *et al.* 2008). This has been attributed to cyclic drought conditions during the early 2000s (Micucci *et al.* 2007; Larriera *et al.* 2008).
** Not available.

Bolivia

The population of broad-snouted caiman in Bolivia is at the far western edge of the species' range. According to Imhof (unpublished 2006), approximately three percent of the species' range is in Bolivia. In 1983, broad-snouted caiman was found in the Pando Department (departments in South America are comparable to state jurisdictions in the United States) of Bolivia, which is at the northwestern tip of Bolivia (Medem 1983). In 1989, broad-snouted caiman was only found in the Pilcomayo River area, a tributary of the Paraguay River (King and Videz-Roca 1989). The Paraguay River, also known as Rio Paraguay, is 2,621 km (1,629 miles (mi)) in length and runs through Bolivia, Brazil, Paraguay, and Argentina, joining the broad-snouted caiman populations in these countries. Surveys in the late 1990s considered the Bolivian population of this species to be severely depleted (Verdade 1998, pp. 18–19). Anecdotal reports indicate that the abundance of broad-snouted caiman in the Pilcomayo River region may have increased over the past 10 years, but in the Bermejo River region, populations may have declined (Aparicio and Ríos 2008, pp. 111, 122). It is unclear whether the population change is public perception or whether the perception represents an actual change in broad-snouted caiman population numbers within Bolivia.

During a survey conducted in 2003 and 2004, 6.2 individuals per km were observed (Aparicio and Rios 2008, p. 104). The survey was conducted in 54 water bodies; 42 of which are part of the Pilcomayo River sub-basin, 12 water bodies were in the sub-basin of the Bermejo River (Aparicio and Rios 2008, p. 110). The highest abundance values were recorded in ''atajados'' (dikes) and artificial ponds. Broad-snouted caiman here exhibit preferences for inhabiting shallow temporary water bodies that have abundant vegetation cover. The population of broad-snouted caiman for this area was calculated on the basis of 135 individuals. In 1998, an abundance of 3.3 individuals per km was reported (Pacheco and Llobet 1998). The 1998 data indicated that the population was dominated by young individuals (Aparicio and Rios 2008, p. 110). A high level of young may indicate that the population is growing. Although different survey methods and timing were employed in the 1998 and 2003–2004 surveys, the population estimates suggest an increase in density of almost 3 individuals per km from 1998 to 2003–2004. A further observation of the survey found that broad-snouted caiman exist in areas previously unknown to be inhabited. It is found in the Gran Chaco, Arce, and O'Connor Provinces (sub-basins Pilcomayo and Bermejo) in the Tarija Department, which is in the south of Bolivia. Despite information suggesting an increasing trend in the Bolivian population, populations of broad-snouted caiman are still considered to be severely depleted in Bolivia (Aparicio and Ríos 2008, p. 104; Verdade *et al.* 2010, p. 19).

Brazil

Brazil has the largest range for this species; approximately 60 percent of the species' range is in Brazil (Imhof unpublished 2006). In 2003, Brazil established a nationwide research and development program, called Programme for Biology, Conservation and Management of Brazilian Crocodilians (Coutinho and Luz 2008 in Velasco *et al.* 2008 p. 80). The broad-snouted caiman was listed as an endangered species in Brazil until 2003, at which time the species was withdrawn from the Brazilian List of Endangered Fauna (The Brazilian Institute of Environment and Renewable Natural Resources [IBAMA] 2003). In 2006, it was reported that in southeast Brazil there were four farms involved in breeding this species. There were a total of 354 caiman in the farms, and in 2006, 719 hatchlings had been produced (CSG Steering Committee Meeting 2006, p. 6). We have no other information about the status of this program.

Although there is still a lack of population data and monitoring, the surveys conducted indicate that broad-snouted caiman is present (confirmed in

44 percent of 64 areas surveyed) throughout the São Francisco River basin, its primary habitat. A 2006–2007 survey conducted in the São Francisco River basin found the occurrence of crocodilians in 61 percent of 64 surveyed localities, in which the presence of broad-snouted caiman was confirmed in 44 percent of the surveyed sites. This was a survey conducted primarily to detect presence and absence, rather than an estimate of the population (Filogonio *et al.* 2009, p. 961). Caiman occurred in both lentic (still water) and lotic (moving water) habitats, although caiman preferred water bodies consisting of small dams, oxbow lakes, and wetlands. Despite the hunting pressure and human impact on natural habitats, results indicated that the populations of broad-snouted caiman in the São Francisco basin are broadly distributed and not fragmented (Filogonio *et al.* 2009, p. 961).

No other recent survey data are known in Brazil other than in the northwest portion of Santa Catarina Island, in the Ratones River plain. In this area surveyed, a density of 0.25 caiman per km was encountered (Fusco-Costa *et al.* 2008, p. 185). Based on their size, these caiman were generally considered to be adults. The purpose of study was to primarily confirm the presence of this species in this location.

Preliminary data indicate that this species is more widespread and prevalent in Brazil than previously believed. The main concern for this species in Brazil appears to be dams that have been constructed for hydroelectric stations that block water flow to wetlands. Both drainage of land for agriculture and river pollution have also reduced the availability of broad-snouted caiman habitat in Brazil (Verdade 1998, pp. 18–19). Hunting pressure is another factor that affects broad-snouted caiman in Brazil. It is hunted for several reasons: Because caiman feed on the fish attached to fishing nets; because caiman destroy fishing nets; and because caiman are a source of food. Although Brazil has established a research and development program for the conservation and management of Brazilian crocodilians, data are lacking for this species.

Paraguay

No recent survey data are available for Paraguay, however, according to Imhof (unpublished 2006); approximately seven percent of the species' range is in Paraguay. The latest data available indicate that the population of broad-snouted caiman is naturally low and scattered throughout eastern Paraguay and the southern half of the Chaco region, western Paraguay, possibly because other potential habitat in western Paraguay is ephemeral (seasonal, not permanent) (Scott *et al.* 1990, pp. 43–49). The Paraguayan population is found in seasonal marshes and livestock ponds, and has colonized manmade water bodies (Scott *et al.* 1990). There is no known conservation program for broad-snouted caiman in Paraguay.

Uruguay

The broad-snouted caiman is the only caiman species found in Uruguay (Borteiro *et al.* 2006, p. 98); the percentage of this species' range in Uruguay is unknown (Imhof unpublished 2006). There were little data available regarding this species' population numbers until recently. New information available to the Service updates the density estimates of broad-snouted caiman in Uruguay. The population of broad-snouted caiman in Uruguay is more widespread and appears larger than previously believed (Borteiro *et al.* 2006, pp. 97–108; Borteiro *et al.* 2008, pp. 244–250), but it is unclear whether population growth has occurred or whether earlier surveys were inaccurate. In the past, it was suggested that a decline in population had occurred in Uruguay, but no strong basis for this existed (Verdade 1998, p. 20). Recent observations and field surveys indicate that broad-snouted caiman is fairly common in northern Uruguay, and is also widely distributed in central and western Uruguay (Borteiro *et al.* 2008, p. 248). This species is adaptable to a wide range of water sources and habitats (Borteiro *et al.* 2006, p. 102, Borteiro *et al.* 2008, p. 244) and is connected to the Argentina and Brazilian populations through the Uruguay River basin (Borteiro *et al.* 2006, p. 103).

Previous local reports about the population status of broad-snouted caiman in Uruguay published since the mid 1950s suggested that this species was subject to extinction due to habitat destruction and poaching (Vaz-Ferreira 1956; Orejas-Miranda 1969; Talice 1971; Vaz-Ferreira 1971; Achaval 1977); however, no discussion of survey data and methods was made to support these conclusions (Borteiro *et al.* 2008, p. 247). During surveys conducted between 1981 and 2003, the species was found in both the Cebollatí and Tacuarí Rivers, as well as in the Pelotas, India Muerta, and San Miguel stream basins (Borteiro *et al.* 2006, p. 97). In the Department of Artigas (northern tip of Uruguay), broad-snouted caiman was found to be present in 29 out of 36 surveyed areas (Borteiro *et al.* 2008, pp. 246). The area studied consisted of approximately 400 km^2 (154 mi^2) of fluvial plains in the Uruguay River basin, in Artigas Department, northwestern Uruguay. The caiman observed were predominantly sub-adults. A total of 462 individuals were located during these surveys, and the density was determined to be 3.5 individuals per km.

Although comparisons with these previous surveys are difficult based on unknown methodologies used in the past, the 2008 data, along with the population age structure of caiman, suggests that the population may be increasing (Borteiro *et al.* 2008, p. 248). The researcher noted that the observed caiman were predominantly subadults and, thus, had the potential to recruit into adult size classes (as opposed to very young hatchlings which have a significantly higher mortality rate). This observation may be due to an increase in agricultural and livestock activities that inadvertently had a positive effect on broad-snouted caiman. These previous reports about the population status of broad-snouted caiman in Uruguay may have been due to inadequate surveys or survey methodology, or the population may have grown.

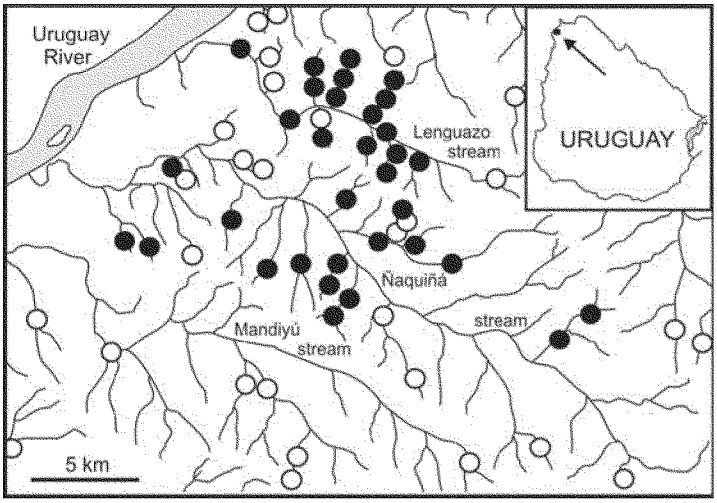

Figure 2. Uruguay broad-snouted caiman locations. Courtesy of Borteiro *et al.* 2008.

In 2008, the number of caiman located in each area surveyed ranged between one and 31. The average abundance was between 1.3 and 3.4 per km (Borteiro *et al.* 2008, p. 246). Research conducted recently regarding the population age structure of caiman in Uruguay indicates that the population is increasing (Borteiro *et al.* 2008, p. 248). This may be due to an increase in agricultural impoundments that have been constructed in the past few decades which have unintentionally created suitable habitat for caiman. Each department in which broad-snouted caiman has recently been documented and the most recent date observed is below (Borteiro *et al.* 2008, pp. 244–250).

Dept. of Artigas (Northern Uruguay; caiman commonly found)
- Yacuy stream (2002)
- Mandiyu stream (2003)

Dept. of Cerro Largo (eastern Uruguay)
- Fraile Muerto stream (2005)

Dept. of Lavelleja
- José Pedro Varela (2003)

Dept. of Paysandú (1997)

Dept. of Rocha
- San Luis (2001)
- San Miguel River stream (2003)

Dept. of Rivera (1992)

Dept. of Tacuarembó
- Paso Bonilla (2003)

Dept. of Salto (Northwestern Uruguay, no current reports; historical accounts only, Borteiro *et al.* 2006, pp. 98–100)

Dept. of Treinta y Tres
- Merin Lake; Tacuari River (2002)
- Paso del Dragon (2002)
- Kiosco Tacuari (2003)

Additionally, in Uruguay, a private farm began in 2002 that involved reproduction and reintroduction of this species into the wild. The goal of this Government-sanctioned farm was to produce skins and meat commercially. In 2008, there were 20 adult caiman in the farm, yet they had reintroduced 100 caiman back into the wild (Velasco *et al.* 2008, p. 82). The Service knows of no additional information regarding this private farm.

In summary, the population of broad-snouted caiman in Uruguay appears to be larger than previously believed, but differences in survey methodologies used make it difficult to assess population trends. The percentage of the broad-snouted caiman population that exists in Uruguay has still not been estimated.

Distinct Population Segment Analysis

As indicated previously in this document, the Government of Argentina requested that we review the status of the species in Argentina in order to determine whether or not the species warrants reclassification to threatened status under the Act. Section 3(16) of the Act defines ''species'' to include ''any species or subspecies of fish and wildlife or plants, and any *distinct population segment* (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). In evaluating whether the action petitioned by Argentina is warranted, we first must analyze whether this population constitutes a ''species'' as defined under the Act. Thus, we begin our analysis with a determination of whether the population in Argentina represents a DPS. A DPS is a listable entity under the Act, and is treated the same as a listed species or subspecies. It is listed, protected, and recovered just as any other endangered or threatened species or subspecies. The term ''distinct population segment'' is part of the statutory definition of a ''species'' and is significant for listing, delisting, and reclassification purposes under section 4 of the Act.

To interpret and implement the DPS provisions of the ESA and Congressional guidance, the Service and the National Marine Fisheries Service jointly published the DPS Policy (see the Policy regarding the recognition of distinct vertebrate population segments under the Act (61 FR 4722; February 7, 1996). Congress included the DPS concept in the ESA, recognizing that a listing, reclassification, or delisting action may, in some circumstances, be more appropriately applied over something less than the entire area in which a species or subspecies is found or was known to occur in order to protect and recover organisms in a more timely and cost-effective manner. A DPS is a listable entity that is usually described *geographically* rather than *biologically.* By using international boundaries, we are able to clearly identify the geographic extent of the DPS listing and thereby facilitate law enforcement and promote public understanding of the listing. Under this Policy, we evaluate a set of elements in a three–step process in order to make our decision concerning the establishment and classification of a possible DPS. These elements are applied similarly for both additions to, reclassifications under, and removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. These elements include:

(1) The discreteness of a population in relation to the remainder of the taxon to which it belongs;

(2) The significance of the population segment to the taxon to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing (addition to the list), delisting (removal from the list), or reclassification (*i.e.,* is the population segment endangered or threatened).

The Policy first requires the Service to determine that a vertebrate population is *discrete* in relation to the remainder of the taxon to which it belongs. Discreteness refers to the ability to delineate a population segment from other members of a taxon based on either (1) Physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation), or (2) international governmental boundaries that result in significant differences in control of exploitation, management, or habitat conservation status, or regulatory mechanisms that are significant in light of section 4(a)(1)(D) of the Act—the inadequacy of existing regulatory mechanisms.

Second, if we determine that the population is discrete under one or more of the discreteness conditions, then a determination is made as to whether the population is significant to the larger taxon to which it belongs in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used ''sparingly and only when the biological evidence indicates that such action is warranted.'' In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon to which it belongs. This consideration may include, but is not limited to the following:

(1) The persistence of the population segment in an ecological setting that is unique or unusual for the taxon;

(2) Evidence that loss of the population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; and

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics from other populations of the species.

A population segment *needs to satisfy only one of these conditions to be considered significant.* Evidence with respect to any one of these scenarios may allow the Service to conclude that a population segment can be significant to the taxon to which it belongs. Furthermore, the Service may consider other information relevant to the question of significance, as appropriate.

Lastly, if we determine that the population is both discrete and significant, then the DPS Policy requires an analysis of the population segment's conservation status in relation to the Act's standards for listing (addition to the list), delisting (removal from the list), or reclassification (*i.e.,* is the population segment endangered or threatened). A detailed discussion is then presented for the five listing factors for each DPS as required by the Act. We analyze these factors in response to the current status of the species, which encompasses present and future threats and conservation efforts.

The broad-snouted caiman has a continuous range from Argentina to Bolivia, Brazil, Paraguay, Uruguay (see Figure 1). We evaluated the status of this species to determine if two distinct population segments exist (one in Argentina, and the other in Bolivia, Brazil, Paraguay, and Uruguay) under this Policy because its range spans several countries and its conservation status varies by country. We evaluated the species in this manner specifically for two reasons. First, the Government of Argentina petitioned us to reclassify the species in Argentina to threatened, and second, in Argentina, this species is listed in Appendix II of CITES, and in the rest of its range: Bolivia, Brazil, Paraguay, and Uruguay, it is listed in Appendix I of CITES. The significance of this distinction is that these two populations may be subject to different management regimes and may have different conservation statuses. Thus, we considered whether these two populations meet the discreteness and significance criteria under our DPS policy, and then whether these two potential DPSs of the broad-snouted caiman still meet the definition of endangered, should be reclassified to threatened, or whether either population segment has recovered and is no longer either endangered or threatened.

Discreteness

In the first step in our DPS analysis, we determine whether there are any populations that are discrete in relation to the remainder of the taxon to which it belongs. A DPS may be considered discrete if it meets the criteria described above under Distinct Population Segment Analysis. Recognition of international boundaries when they coincide with differences in the management, status, or exploitation of the species under the Act is consistent with CITES, which recognizes international boundaries for these same reasons.

Physical, Physiological, Ecological, or Behavioral Factors

There are no studies or information that indicate there are physical, physiological, ecological, or behavioral characteristics that would contribute to separateness between the Argentine population and the population in Bolivia, Brazil, Paraguay, and Uruguay. The Paraguay River joins the broad-snouted caiman populations in Argentina, Bolivia, Brazil, and Paraguay. The Uruguay population of the broad-snouted caiman is connected to the Argentine and Brazilian populations through the Uruguay River basin (Borteiro *et al.* 2006, p. 103). Broad-snouted caiman populations are also connected through the Paraná and São Francisco River systems of northeast Argentina, southeast Bolivia, Paraguay, and northeast Uruguay. This is a wide-ranging species that occurs primarily in freshwater environments such as lakes, swamps, and slow-moving rivers. Because it is connected via the major river systems that flow through the species' range and we have found no information indicating separateness between the Argentine population and the population occurring in the remainder of the species' range due to physical, physiological, ecological, or behavioral factors,, we did not find either population segment is discrete based on this factor.

Moreover, we are not aware of any quantitative data of genetic or morphological discontinuity to indicate separateness between the two populations. Because of their interactions through interconnected river systems and a current range that mirrors their historical range, we find that the two populations overlap, allowing for genetic intermixing. Therefore, these two population segments cannot be delineated based on physical, physiological, ecological, or behavioral factors.

International Differences in Species' Conservation Status

Under our DPS policy, consideration may be given to utilizing international boundaries in establishing discreteness when differences in management, conservation status, or control of exploitation of the species exist between

these population segments as a consequence of national legislation. Thus, we analyze below whether any of these differences exist that are significant in light of section 4(a)(1)(D) of the Act.

Argentina

Two clear differences in the exploitation, management, habitat conservation status, or regulatory mechanisms of this species exist between Argentina and the remainder of its range. This species is intensely managed in Argentina, and due to its improved status in the wild, is listed in Appendix II of CITES. In contrast, this species is not intensively managed in the remainder of its range, and it continues to be listed in Appendix I under CITES due to its unimproved status in the range countries outside of Argentina. The primary reason this species was protected by the ESA and CITES was because of the decrease in population numbers due to overutilization (see discussion under Factor B in the Evaluation of Factors Affecting the Species section below). Argentina's management regime has resulted in an increase in this species' population such that harvest for international trade may be conducted sustainably under proper management.

Although all of this species' range countries have national protected-species and protected-areas legislation under the jurisdiction of specific ministries or departments that control activities that impact the broad-snouted caiman and its habitat, Argentina's national legal framework is particularly robust (See Factor D). In 1990, Argentina began a joint government-private initiative to recover this species in the Santa Fe Province (Jenkins *et al.* 2004, pp. 25–28; Verdade 2010, pp. 18–20). This program was ratified by Provincial Law 4830, Articles 22 and 37 (CITES CoP 10, Proposal 10.1) and subsequently expanded in scope. Now there are seven government-approved broad-snouted ranching programs within four provinces. This initiative began in order to increase this species' population size and to be able to sustain commercial harvest. In the proposal to transfer this species from CITES Appendix I to Appendix II, the proposal noted that although the primary threat was initially overutilization, the more recent and significant threat was habitat loss (CITES Cop 10, Proposal 10.1). The proposal indicated that a method to reduce the threat of habitat loss is to put an economic value on the species' habitat, so that the local communities and farmers would not drain the land (degrade the species' habitat). Thus, Argentina's caiman egg harvesting program began creating incentives for locals to protect and conserve habitat for the broad-snouted caiman (see Factor D).

This species is also protected through legislation (Law 22.421 and Decree 691/81), administered by the Dirección Nacional de Fauna y Flora Silvestres. The Government of Argentina is adequately enforcing its legal frameworks, both at the national and international levels. The best available information strongly suggests that the caiman population in Argentina is increasing, while the population trend in the other range countries is unclear (Verdade *et al.* 2010, pp. 18–19). The species has significantly increased in density since the caiman ranching program began in 1990, and its range has expanded into areas where it had not been seen prior to 1990. In the Santa Fe Province, for example, the number of nests identified increased from 14 in 1990 to 304 nests in 2002 (Jenkins *et al.* 2004, p. 27). The monitoring reports indicate that Argentina's management of the species is resulting in an upward trend in this species' population. Argentina submits reports in accordance with CITES and is an active participant in the IUCN's Crocodile Specialist Group, particularly for this species. The management of this species has led to significant improvement in the status of the species in Argentina, which has been demonstrated through monitoring and reporting (Jenkins *et al.* 2004, pp. 25–28; Verdade *et al.* 2010, pp. 18–20). Due to Argentina's management, the population of broad-snouted caiman is now widespread and abundant throughout its range in Argentina. It is relatively common in suitable habitat in the provinces of Formosa, Santa Fe, Corrientes, and Salta. While some habitat loss and degradation remain in Argentina, these threats have been reduced, as explained in our five-factor analysis below.

Bolivia, Brazil, Paraguay, Uruguay

Within each of these countries, not only is there a wide variability in the amount of information available about the species, but also about the level of management and monitoring of the species (Borteiro *et al.* 2006; Larriera *et al.* 2008, p. 152; Verdade *et al.* 2010, p. 20). This species is listed in Appendix I of CITES in these range countries, which means that international trade originating from these countries of broad-snouted caiman including its parts and products, for primarily commercial purposes is prohibited. To our knowledge, none of these countries have submitted proposals to change the status of this species under CITES to the less restrictive Appendix II listing (*www.cites.org,* accessed July 7, 2011). Although this international trade restriction is in place for range countries other than Argentina, we remain concerned about habitat loss, the status and management of wild populations in those countries.

In the remainder of this species' range (Bolivia, Brazil, Paraguay, and Uruguay), these governments either have not demonstrated an ability to adequately enforce their legal framework, or there is no population trend or monitoring data about the species to indicate the status of the species in these countries is improving. We found little to no information about the status of the species in these countries. This was supported by the most recent report on the status of the species prepared by the IUCN's Crocodile Specialist Group (Verdade *et al.* 2010, pp. 18–19). The best available information indicates that this species in these countries is still subject to unmitigated pressures such as destruction of habitat due to human encroachment, construction of dams, and conversion of habitat to agriculture, and, in some cases, illegal hunting. Conservation actions for this species may not be a priority in these other range countries, and these countries may be facing economic issues, high levels of poverty, hunting pressure, and conversion of caiman habitat to other uses. The lack of funding and personnel often makes enforcement of their legal frameworks challenging. As a result of differences in exploitation, management, habitat conservation status, or regulatory mechanisms, the broad-snouted caiman in Bolivia, Brazil, Paraguay, and Uruguay remains in CITES Appendix I. Based on these differences in the control and management of habitat and exploitation as delineated by international boundaries, we consider the population in Bolivia, Brazil, Paraguay, and Uruguay to be a separate discrete population.

Conclusion on Discreteness

We have determined, based on the best available information, that the population of broad-snouted caiman in Argentina is discrete from the population in Bolivia, Brazil, Paraguay, and Uruguay due to the significant difference in the control of exploitation, management of habitat, conservation status, and regulatory mechanisms between international boundaries. We conclude that these two populations (1) the population in Argentina and (2), the population in Bolivia, Brazil, Paraguay,

and Uruguay, of the broad-snouted caiman meet the requirements of our DPS Policy for discreteness.

Significance

If a distinct population segment is considered discrete under one or more of the conditions described in the DPS policy, its biological and ecological significance will be considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of each discrete population segment's importance to the taxon to which it belongs. Since precise circumstances vary considerably from case to case, the DPS policy does not describe all ways that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible scenarios that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs (see additional discussion above under Distinct Population Segment Analysis).

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance. Having determined that the population of broad-snouted caiman in Argentina is discrete from the population in Bolivia, Brazil, Paraguay, and Uruguay, we then determine the significance of these two discrete populations to the taxon. We evaluate the biological and ecological significance based on the available scientific evidence of each population segment's importance to the taxon to which it belongs. A population's biological significance is evaluated based on the principles of conservation biology using the concepts of *redundancy, resiliency,* and *representation* (see Redford *et al.* 2011 for additional information on these concepts). These concepts also can be expressed in terms of four viability characteristics: Abundance, spatial distribution, productivity, and diversity of the species.

Persistence in a Unique Ecological Setting

The broad-snouted caiman is a wide-ranging species that occurs primarily in freshwater environments such as lakes, swamps, and slow-moving rivers. Its habitat in Argentina is typical of the species' habitat throughout its range (including Bolivia, Brazil, Paraguay, and Uruguay). We do not have any evidence to indicate that the Argentine population of the broad-snouted caiman occurs in habitat that includes unique features not used by the taxon elsewhere in its range. Therefore, we conclude that neither the discrete population of broad-snouted caiman in Argentina nor the discrete population in Bolivia, Brazil, Paraguay, and Uruguay are ''significant'' as a result of persistence in a unique or unusual ecological setting.

Differences in Genetic Characteristics

No data have been located that indicate that the Argentine population and the population in the remaining range countries are each significant based on genetics (Villela *et al.* 2008, pp. 628–635). Our knowledge across the range countries is sparse with respect to genetic diversity and integrity on the broad-snouted caiman. However, a 2008 study indicates that genetic flux (genetic flow between members of a species) occurs; the species remains fairly connected through the major waterways within its range. River channels are important routes to crocodilian dispersal. The Paraguay River joins Brazil, Bolivia, Paraguay, and Argentina, and the populations of this species are connected in part through this river. The populations of this species are also connected between Uruguay and Argentina via the Uruguay River, which is the border between these two countries.

Additionally, a 2006–2007 survey in Brazil found that *C. latirostris* is widely distributed throughout the São Francisco River basin, and its distribution pattern indicates that the populations within the river basin are not fragmented (Filogonio *et al.* 2010, p. 964). The genetic variations of broad-snouted caiman were found to be closely related to patterns of these river basins, and indicated that there was no significant correlation between genetic variation and genetic distance (Villela *et al.* 2008, p. 6). This species is not only a mobile species but is also flexible in its habitat preferences. The river basins within its range appear to be sufficiently connected, despite any habitat modifications. There is no other information available that indicates there are significant differences in the populations. Based on the best available information, we have determined that the Argentine population of the broad-snouted caiman does not have any genetic characteristics that are markedly different from the population in Bolivia, Brazil, Paraguay, and Uruguay.

Gap in the Taxon's Range

The loss of a DPS could result in a significant gap in the range of a taxon, indicating that a population segment represents a significant resource warranting conservation under the Act (61 FR 4724). The Ninth Circuit Court stated ''[t]he plain language of the second significance factor does not limit how a gap could be important,'' *National Association of Home Builders* v. *Norton,* 340 F.3d 835, 846 (9th Cir. 2003). Thus, we consider ways in which the loss of each discrete population of the broad-snouted caiman might result in a significant gap in the range of species. Its range is estimated as follows: 28 percent in Argentina, and 72 percent in the remainder of its range: 4 percent in Bolivia, 58 percent in Brazil, 8 percent in Paraguay, and 2 percent in Uruguay (Larriera pers. comm. 2011).

Argentina

We considered whether the Argentine DPS constitutes a significant gap in the range of the species. In 2006, the population of broad-snouted caiman in Argentina was estimated to be 13 percent of the potential global population. The species is distributed in nine provinces in the northern part of Argentina. It is increasing within its range within Argentina into habitat where it had not been seen since the caiman ranching program began. It has been observed in a variety of habitats and waterways including rivers near waterfalls, freshwater creeks with rocky bottoms, and in agriculture and cattle impoundments.

In Argentina, human impact on the species has been reduced since 1990 through educational programs and incentives which have served to minimize habitat loss. The caiman ranching program (see discussion under Factor A below) has resulted in improvements in the quality of the species' habitat (such as the decrease in draining of wetlands), thereby increasing the range and population size of the species. Its rate of survival in Argentina far surpasses the normal survival rate of this species in the remainder of its range due to the ranching program (described below). Reports indicate that the Argentine population of this species is increasing. The captive-held stock reported in 2010 was 39,624 (Larriera *et al.* 2010, p. 1), and the density of caiman surveyed in the wild has increased substantially (Piña *et al.* 2009, pp. 1–5) since surveying began in 1990.

Argentina is the only range country that actively manages and conserves the broad-snouted caiman and its habitat by harvesting eggs, hatching the young, raising them to an age where they are more able to escape predators and other threats, and returning between five and ten percent of those hatchlings to the

wild (Verdade *et al.* 2010, p. 20). Experts indicate that returning at least five percent of the hatchlings to the wild increases the species' survivability, as it mitigates for the high incidence of mortality that occurs in the wild even prior to hatching (Bolton 1989, Ch. 4, p. 1). Most caiman mortalities occur either before hatching or during the first few months after hatching due to factors such as flooding or nest predation (Bolton 1989, Ch. 4, p. 1). The release of these animals at a later age significantly increases their chances of survival, primarily due to the hatchlings' increased ability to escape predators and their ability to survive other factors such as nest flooding, fire ants, and exposure to pesticides. Because Argentina releases hatchlings into the wild after an age they are most susceptible to predators and flooding events, the population has a greater chance of survival in the wild than broad-snouted caiman hatchlings in the other range countries. This increase in survivability further distinguishes the Argentine population from rest of the species' range and greatly contributes to the resiliency (abundance, spatial distribution, and productivity) to the species as a whole.

Argentina's wild caiman population is also well distributed. The Argentine population is considered healthy and increasing as opposed to the populations in Bolivia, Brazil, Paraguay, and Uruguay. This species is moving into habitat where it had not been seen in many years, which increases the potential environmental variability within the range of the species. Argentina's broad-snouted caiman population helps contribute to the viability of the species overall; and it is providing a margin of safety for the species to withstand catastrophic events, strengthening the redundancy of the species. This expansion allows for adaptations in response to variations in the environment. The abundance of this species in Argentina contributes to the potential diversity of the species, particularly since Argentina constitutes the southernmost part of its range. Because it is at the edge of its range, this population may add to its adaptive capabilities, particularly if there is a significant gradient in temperature within the range of the species. Because the Argentine population is more robust than the other range countries, the loss of the Argentine population would result in a significant gap in the range of the species, particularly because it is believed to consist of over a quarter (approximately 28 percent) of the species' range.

Argentina's active management efforts affect the quality of the species' habitat which subsequently contributes to the species' resiliency. Based on the increase in density as evidenced by the population counts, the significant increase of hatchlings reared in captivity and subsequently released, and the expansion in range, we find that the population of the broad-snouted caiman in Argentina significantly contributes to the resiliency of the species.

We found that the success of the caiman ranching program has created a robust, healthy, sustainable, increasing population in Argentina. This distinguishes the Argentine population from rest of the species' range where it is not being intensely monitored and managed to the point where it is self-sustaining. The factors in Argentina including: The increase in density and population counts; large numbers of caiman collected from the wild, reared in captivity and subsequently released; and expansion in range, all contribute to the resiliency, representation, and redundancy of the species and its overall viability.

Thus, the loss of the Argentine population would create a significant gap in the current range of the species. Based on this evaluation of this population's biological significance, we found that the broad-snouted caiman in Argentina is significant to the species as a whole. We, therefore, conclude that the population of broad-snouted caiman in Argentina is significant under the DPS policy because it contributes to the redundancy, resilience, and representation of the species such that the loss of this DPS would result in a significant gap in the range of this taxon.

Bolivia, Brazil, Paraguay, and Uruguay

Because the species is widely distributed within these countries and constitutes 72 percent of its range, the Bolivia, Brazil, Paraguay, and Uruguay population is significant under the DPS policy because it also contributes to the redundancy, resilience, and representation of the species such that the loss of this population would result in a significant gap in the range of this taxon.

Conclusion on Significance

We have determined, based on the best available information, that the population of broad-snouted caiman in Argentina is significant to the taxon and the population in Bolivia, Brazil, Paraguay, and Uruguay is also significant to the taxon because the loss of each discrete population segment would create a significant gap in the current range of the species. Based on this evaluation of each population segment's significance, we found that each is significant to the species as a whole.

Conclusion of DPS Analysis

Under the DPS policy, once we have found that a population segment is discrete and significant, we then evaluate whether the potential DPS warrants endangered or threatened status under the Act, considering the factors enumerated under section 4(a)(1) and the statutory definitions for an ''endangered species'' and ''threatened species.'' Based on our evaluation under the DPS Policy, we propose to establish two distinct population segments of the broad-snouted caiman. The first is the population in Argentina, and the second is the population in the remainder of its range: Bolivia, Brazil, Paraguay, and Uruguay. We will refer to this second population as the ''Northern DPS.'' On the basis of the best available information, we conclude that each of these two population segments meet the requirements of our DPS Policy for discreteness and significance. These two DPSs are each discrete due to the significant differences in the management of habitat, conservation status, exploitation, and regulatory mechanisms between the international boundaries of Argentina and the species in the rest of its range: Bolivia, Brazil, Paraguay, and Uruguay. These two discrete population segments are clearly defined by international governmental boundaries and these other differences.

The robustness of the population in Argentina significantly contributes to the biological and ecological health and viability of the species as a whole. Argentina is the only country actively managing the broad-snouted caiman. It also is the only country actively working with local people to create financial incentives to protect caiman and its habitat. Argentina's implementation of its ranching program increases the species' survivability success, which further distinguishes the Argentine population from the rest of the species' range. It was reclassified to Appendix II in Argentina, allowing for commercial trade in accordance with the provisions of CITES. Due to Argentina's intense management of this species, the survivability rate of the Argentine population is far higher than in the other countries within this species' range. This difference is further supported by the fact that broad-snouted caiman in Bolivia, Brazil, Paraguay, and Uruguay remains listed in Appendix I of CITES as a species threatened with

extinction which is or may be affected by trade, while the population in Argentina no longer meets the criteria for an Appendix I listing.

We find that these two population segments meet our DPS policy for significance because the loss of either population (28 percent of its range in Argentina and 72 percent of its range in Bolivia, Brazil, Paraguay, and Uruguay) would result in a significant gap in the range of the taxon. Based on our analysis, we find that these two populations meet the criteria for discreteness and significance under the DPS Policy due to (a) differences in management delineated by international boundaries, and (b) a loss of either population segment (28 percent of its range in Argentina and 72 percent of its range in Bolivia, Brazil, Paraguay, and Uruguay) would result in a significant gap in the range of the taxon.

Evaluation of Factors Affecting the Species

Section 4(b) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting species. Revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with these same five factors and the Act's definitions for endangered and threatened species Section 4(b) requires the determination of whether a species is threatened or endangered to be based on the best available science. We are to make this determination after conducting a review of the status of the species and taking into account any efforts being made by foreign governments to protect the species.

For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. Under section 3 of the Act, a species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range and is ''threatened'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word ''species'' also includes any subspecies or, for vertebrates, distinct population segments.

Following is a range wide threats analysis in which we evaluate whether the broad-snouted caiman is endangered or threatened in the Argentine DPS and the DPS which consists of Bolivia, Brazil, Paraguay, Uruguay, which we will refer to as the Northern DPS.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat destruction and modification has increased throughout the species' range and is now likely the greatest threat to the survival of the broad-snouted caiman (Verdade *et al.* 2010, pp. 18–19). The overharvest for commercial purposes, rather than habitat destruction or modification, was the primary reason for the broad-snouted caiman's inclusion in CITES and subsequently being listed under the Act. The analysis of the five factors under the Act requires an investigation of both current and future potential factors that may impact the species, including the present or threatened destruction, modification, or curtailment of its habitat or range. We found that data on habitat destruction were generally presented separately for each individual country. Therefore, the following analysis of the potential threats to the species from habitat destruction or modification generally first presents the specific information available for broad-snouted caiman in each country, and then summarizes the information that was available for the two DPSs.

Argentine DPS

In some areas in Argentina, habitat destruction has significantly increased in recent years (Verdade *et al.* 2010, p. 19). Argentina has lost substantial forested areas, and conversion of caiman habitat to other uses is likely to further affect the broad-snouted caiman's habitat in Argentina. In some cases, habitat modification actually has positive effects on the caiman (such as the creation of water impoundments, for example), and in other cases the habitat modifications may have a negative effect. The practice of drying swamps (potential caiman habitat) through channeling occurs in its habitat, particularly for producing soybeans (Larriera *et al.* 2008, p. 152). Landowners also commonly channelize wetlands to increase grazing land for cattle (which may have a positive effect). Since the early 1800s, Argentina's economy greatly depended on cattle grazing; however, over the past 10 years, Argentina has undergone significant changes in land use.

The world market for soy is causing the conversion of pastures to soy monocultures. Soy is now Argentina's main export crop, and Argentina is the world's third largest producer of this commodity (USDA, Foreign Agricultural Service (FAS) 2010a, p. 11). Argentina's shift toward soy has displaced cultivation of many grains and vegetables as well as beef production. Many established cattle ranches are being sold to soy investors. For example, in Salta Province, potential conversion to soy cropland in Northern Argentina could exceed over one million hectares (USDA FAS 2010b, p. 1). Cattle feed mostly on established introduced grasses but native grasslands also persist in pastures, especially along wetlands edges. Soy now covers approximately 16.6 million hectares, more than half the country's cultivated land (USDA FAS 2010b, p. 10). The large scale production of soy requires the application of fertilizers and pesticides. As a result of this change in habitat use from traditional cattle grazing to primarily soy production in many areas, significant changes in the habitat and landscape occur which affect this species to the point that its former habitat is no longer suitable.

Adding to this problem of habitat conversion is that Argentina's management of its resources is decentralized. Provincial and municipal governments have great autonomy, property rights are respected, and federal authority is relatively limited. This is particularly evident in control over property with respect to the conservation of natural resources, land use, and protection of the environment. In this decentralized system, there is very little comprehensive land use planning at all levels of government. Regulatory mechanisms that exist at the national and provincial levels are seldom coordinated and are sometimes contradictory and inefficient.

Although habitat conversion is currently impacting the species, suitable broad-snouted caiman appears to exist, and the species is expanding into new sites, in part due to intense management of this species through Argentina's caiman ranching programs. For example, as of 2004, surveys indicated that the broad-snouted caiman population in Santa Fe Province increased 320 percent since the project began (Larriera and Imhof 2006). Observed wild population densities increased from an average of between 2 and 8 individuals per km in 1990, to between 20 and 120 individuals per km during the 2008–2009 survey period

(Larriera and Siroski 2010, p. 2). The distribution of the wild population has expanded into areas from which the species had formerly disappeared (Larriera *et al.* 2005).

With respect to habitat modification, some changes have positive effects and some have negative effects. Although this species has been shown to occupy disturbed habitat, much of the species' original range in Argentina has been altered, and significant alteration is expected to occur in the future due to the conversion of cattle pastures to monocultures such as soy, which is not desirable habitat. Increases have been observed in the relative abundance of the species in Argentina due in part to active management programs (see Factor D). These caiman conservation and public awareness programs have resulted in less habitat alteration (*e.g.* burned grass) and less drained marshland for cattle production in the nesting areas (Larriera and Imhof 2006). While these programs are helping, increases in habitat conversion to agriculture, roads and transportation, infrastructure to transport crops such as soy continue (USDA FAS 2010b, p. 2). Without additional incentives and intervention, suitable habitat for this species will decrease. Although it is mitigated by provincial governments through the caiman ranching program, habitat destruction and modification in Argentina is likely to continue in the foreseeable future. Despite the intense management of this species in Argentina, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range continues to be a threat to the broad-snouted caiman.

Summary of Factor A for the Argentine DPS

In most of the range of this species, the habitat threats are very similar; however, a country's management actions (refer to factor D) affect the status of the species. In Argentina, habitat conversion to agriculture continues to cause habitat degradation within the broad-snouted caiman range, although this is being mitigated through the caiman ranching program. Habitat conversion is expected to increase and further degrade this species' habitat. The population numbers in the wild have significantly increased since this species was listed. Data collected on the distribution and abundance of the species indicate that the species' range has expanded and overall population numbers appear to be increasing (Larriera and Imhof 2006). As of 2004, surveys indicate that the broad-snouted caiman population in Santa Fe Province, Argentina, increased 320 percent since the project began (Larriera and Imhof 2006). Observed wild population densities here increased from an average of 2 to 8 individuals per km in 1990, to 20 to 120 individuals per km in 2008–2009 (Larriera and Siroski 2010; p. 2). The distribution of the wild population has also expanded into areas from which the species had formerly disappeared (Larriera *et al.* 2005). However, the degradation and destruction of this species' habitat continues to occur in Argentina. Therefore, based on the best available information, we find that the population in Argentina continues to be threatened by the destruction, modification, or curtailment of its habitat now and in the future.

Bolivia, Brazil, Paraguay, Uruguay DPS (Northern DPS)

In Bolivia, the broad-snouted caiman is on the edge of its range. Broad-snouted caiman has been found in the Pando Department, the Pilcomayo River area, a tributary of the Paraguay River, and in the Tarija department. Here, key threats, particularly in broad-snouted caiman habitat, include loss, conversion, and degradation of forests and other natural habitats and pollution of aquatic ecosystems (Byers *et al.* 2006, p. vi). Particular to this species, both agriculture and pollution have been indicated to be significant threats. In Bolivia, vast areas have been drained for agricultural purposes (also see the discussion under Factor E).

Deforestation in lowland Bolivia exceeded 1,500 km^2 (579 mi^2) per year during the 1980s and early 1990s (Steininger *et al.* 2001, pp. 856–866). Currently, about 300,000 ha (741,316 ac) of forest is lost each year for a variety of reasons including expanding agriculture, due both to large-scale industrial agriculture and to small-scale colonization and cultivation; large-scale infrastructure projects (roads, dams, energy infrastructure); expanding coca production; forest fires; illegal logging; and climate change causing changes in geographical and altitudinal distribution of species and ecosystems (Byers *et al.* 2006, p. vi).

Factors such as low land prices and economic policies promoting an export economy have led to a rapid increase in the growth of the private agricultural sector (Pacheco 1998). Both large-scale and small-scale farmers contribute to the expansion of the agriculture and livestock frontier, and both thrive in the near absence of regulatory oversight and control (Byers *et al.* 2008, p. 22). In Bolivia, large tracts of land have been cleared particularly for sugarcane plantations and soybean production (Aide and Grau 2004, p. 1915; Pacheco 2004, pp. 205–225). The highest abundance values of this species were recorded in ''atajados'' (dikes) and artificial ponds. The tropical forests of Bolivia are found in the departments of Santa Cruz, Beni, and Pando, and northern areas of La Paz and Cochabamba. The deforestation to the north and east of Santa Cruz is primarily due to large-scale agro-industry, whereas the areas of deforestation around Pando and Beni tend to be mainly a result of small-scale colonization and clearing. Large-scale agriculture responds mainly to external market demands (*e.g.,* biofuels, sugarcane, soy; principally from the United States, Brazil, and Argentina), while smaller farmers respond mainly to the domestic market.

The government actively promotes the development of infrastructure projects in the Bolivian lowlands, in particular extensive road construction and improvement (Byers *et al.* 2008 p. 22). Road projects in northwest Bolivia are being considered, including paving of the ''Northern Corridor,'' which is part of the Peru-Brazil-Bolivia hub of the Initiative for Integration of Regional Infrastructure in South America (IIRSA, *http://www.iirsa.org*).

Contamination of water bodies due to sugar mills, which empty their waste into the Rio Grande (Aparicio and Rios 2008, p. 114), also occurs. Sugar mills are commonly known to produce high levels of air and solid waste pollutants as byproducts (U.S. Environmental Protection Agency [EPA] 1997, 26 pp). Waste water from sugar mills can rapidly deplete available oxygen in water creating an inhospitable environment for aquatic life and for species that depend on aquatic environments. In the Bermejo River sub-basin in Tarija, Bolivia, based on the absence of nests and the low number of individuals recorded during nest counts, researchers believe that this population of broad-snouted caiman is probably not reproductively active due to water pollution (Aparicio and Rios 2008, p. 115). This particular area borders wetlands and estuaries in Argentina, where higher quality suitable habitat is available (OSDE 2005b, p. 2) for the species and is likely less disturbed and polluted by humans. Because the Bermejo River sub-basin in Bolivia faces threats due to sugarcane plantations and contamination from sugar mill activities, it is not likely to sustain a healthy population of broad-snouted caiman.

Although natural resource managers recognize the importance of wetlands

(Byers *et al.* 2008, p. 14), economic considerations usually outweigh concerns regarding habitat loss and destruction in Bolivia. The activities described under this factor, such as agricultural production and expansion, sugar mill activities, roads, and other infrastructure development, affect broad-snouted caiman habitat. Its habitat is primarily being affected due to agriculture and pollution. Based on the above factors, we find that the present or threatened destruction, modification, or curtailment of its habitat or range continues to be a threat to this species in Bolivia.

In Brazil, agriculture, pollution, and hydroelectric dams have been indicated to be significant threats to the species (Verdade *et al.* 2010, p. 1). In this country, vast areas have been drained for agricultural purposes. The effects from agricultural activities on the species can be either consumptive (for example, destruction of nests and eggs by machinery) or nonconsumptive (for example, loss of access to traditional nesting or feeding sites), and these effects are generally attributed to habitat loss or fragmentation. Pollution has been a considerable problem in rivers that flow through Brazil's large cities. São Paulo, Brazil's largest city, is in the center of the species' range in Brazil. The species exists here in artificial reservoirs, ponds, marshes, and small wetlands. Construction of large hydroelectric dams (Verdade *et al.* 2010, p. 19) to support Brazil's human population has been indicated to be one of the primary threats here to broad-snouted caiman. Most of the natural wetlands of the Paraná and São Francisco River systems in Brazil have been dammed for these large hydroelectric stations. Construction of dams can have severe impacts on ecosystems (McCartney *et al.* 2001, p. v). For example, a dam blocks the flow of sediment downstream. During construction of dams, disturbance to soils at the construction site is one of the largest concerns. This leads to downstream erosion and increased sediment buildup in a reservoir.

Because the construction of the Jupifi and Ilha Solteira Dams in the 1970s caused the loss of a significant amount of floodplains of the Paraná River, a survey was conducted prior to construction of the Porto Primavera Dam (also known as the Engineer Sérgio Motta Dam). The Porto Primavera Dam is 28 km (17 mi) upstream from the confluence of the Paranapanema and Paraná Rivers. This dam created the Porto Primavera Reservoir and was filled in two stages: The first in December 1998 and the second in March 2001. The purpose of the 1995 survey was to determine what species would be affected by the construction. The survey was done in the Paraná River basin between São Paulo and Mato Grosso do Sul states. The number of caiman nests found during the survey indicated that at least 630 reproductive females were present at that time. The presence of so many nests suggested a large total population (Mourão and Campos 1995, pp. 27–29) in that area. After the study was completed, a recommendation was made to create a reserve to protect habitat downstream of the dam; however, it is unclear whether a reserve was established as a result of the dam being constructed.

With the construction of Porto Primavera Dam, the last floodplains of the Paraná River within the state of São Paulo disappeared, and with them, those populations of wild animals dependent on wetlands for survival also disappeared. Lakes, swamps, and seasonally flooded areas contribute to hydrological ecosystem processes by retaining water and mitigating flooding. These wetlands and lakes are important ecosystem components and are particularly important to the broad-snouted caiman. When altered, they no longer are capable of supporting their unique assemblages of species and maintaining important ecological processes and functions, upon which the caiman relies. Caiman use the São Francisco River main channel and its tributaries as dispersion routes; however, populations of individuals of all age and sizes occur mainly in lentic (still water such as lakes, ponds, or swamps) environments. Studies on the impact of the construction of large hydroelectric stations and how they affect the density and reproduction of broad-snouted caiman populations were conducted using aerial surveys (Mourão and Campos 1995, pp. 27–29). The surveys indicate major damage of the habitat due to these dams. An unusual finding with respect to caiman was that researchers found that the destruction of floating vegetation is particularly destructive. This is likely because floating vegetation is used by caiman for nest construction.

In 2001, the government of Brazil launched a plan for the São Francisco River basin in order to minimize human impacts and implement restoration efforts (Andrade 2002 in Filogonio *et al.* 2010, p. 962). This was a huge undertaking involving federal and local governments, nongovernmental organizations (NGOs), universities, and the public. An initial report was issued in 2005 that indicated that progress had been made in terms of identifying these four issues to be addressed: (1) River basin and coastal zone environmental analysis; (2) public and stakeholder participation; (3) organizational structure development; and (4) watershed management program formulation. As of 2005, the studies and projects had all been completed (www.oas.org/osde, accessed March 9, 2011). However, the implementation process is still underway (*www.ana.gov.br/gefsf,* accessed March 9, 2011).

Caiman habitat is still severely degraded in Brazil. Broad-snouted caiman in the São Francisco River basin occurred not only in preserved habitats but also in habitats affected strongly by human occupation. This attests to the species' highly flexible nature. Researchers even found broad-snouted caiman in sewage and urbanized areas, showing that the species is fairly resistant to human impacts and that habitat modification has varied effects on the species' distribution. The data indicated that habitat modification may be a variable in determining the small size of these natural populations, rather than affecting the species' distribution pattern, at least in Brazil (Filogonio *et al.* 2010, p. 964). A 2006–2007 survey found that most of the surveyed sites presented some degree of human impact (Filogonio *et al.* 2010, p. 962). Habitat modification included: Conversion to pasture in 46 surveyed localities (72 percent), roads (25 localities; 39 percent), urbanization (23 localities; 36 percent) and monocultures (Filogonio *et al.* 2010, p. 962). Of the areas surveyed, broad-snouted caiman was present (positively identified as broad-snouted caiman rather than a different caiman species or unknown caiman species), in 39 localities surveyed (61 percent), and was widely distributed along the river basin. Its presence was detected in all lentic water body types, in the three biomes: Cerrado, Caatinga, and Atlantic Forest (Filogonio *et al.* 2010, pp. 963–964). However, the researchers did not attempt to estimate population size. They observed a number of populations with low numbers of individuals, which were scattered throughout the survey sites. During 2006 and 2007 surveys, researchers found the presence of caiman species in only 17 municipalities in 64 locations along the São Francisco River basin in Brazil.

The density data found in Brazil were similar to that found by Borteiro (2006, 2008), who also found broad-snouted caiman widespread in Uruguay, occurring in 29 of the 36 localities surveyed (81 percent of the sampled areas). Caiman in Brazil were observed in lotic (actively moving water) habitats,

and considering that river channels are important routes to crocodilian dispersal, it is logical to predict not only physical movement of *C. latirostris* throughout its range, but also genetic flux within the river basin. The distribution pattern in Brazil indicates that the populations within the river basin are not fragmented, but seem to exist in low numbers. Despite this data, trend data are lacking regarding the population in Brazil and the health of the species overall. The construction of hydroelectric dams and associated habitat degradation such as pollution and environmental degradation is currently affecting broad-snouted caiman and its habitat. Pollution is a severe problem—caiman habitat overlaps São Paulo, Brazil's largest city, and these polluted rivers that flow through Brazil's large cities.

Although a plan was initiated in 2001 to address issues associated with the construction of the dam in central caiman habitat, 10 years later, there is no evidence that caiman habitat has improved in Brazil, nor does it appear that caiman are a main concern of the plan. The conservation of broad-snouted caiman in Brazil does not appear to be a priority, and there is very little current information available regarding this species in Brazil. Based on the best available scientific and commercial information available, we find that the present or threatened destruction, modification, or curtailment of this species' habitat is a threat to the species and is likely to continue in the future in Brazil.

In Paraguay, no recent data are available specifically for this species. However, we do know that over the past 60 years, widespread and uncontrolled deforestation practices have continued throughout Paraguay, particularly in the eastern region (World Land Trust 2009, p. 1). In 1945, 8.8 million ha (21,745,273 ac) of forest covered this region, but currently it is estimated that less than 1.6 million ha (3,953,686 ac) remain (Huerta 2011, p. 1). Most of Paraguay's tropical moist forests are in the eastern region of the country near the Paraná River. This river is 4,880 km (3,032 mi) in length and extends from the confluence of the Grande and Paranaíba rivers in southern Brazil. It runs through the Atlantic rainforest, also known as Mata Atlântica. The Atlantic Forest stretches from northeast Brazil along the Brazilian Atlantic coastline into Uruguay, inland into the northeast portion of Argentina and eastern Paraguay; and partially overlaps the range of the broad-snouted caiman. Imhof (unpubl. 2006) estimated that 7 percent of the species' range is in Paraguay. Within Paraguay, the Atlantic Forest has been under increasing pressure from development. In Paraguay, the Atlantic Forest is reduced to one large tract, San Rafael, and increasingly numerous scattered and fragmented small patches. More than half of the original area of the Atlantic rainforests had been degraded by the turn of the last century, and more recently only one percent was found to be still in its original state (Wilson 1988, in Rivas *et al.* 1999, chapter 5). Conservative estimates have placed the remaining forest cover in Paraguay at approximately 6 percent of the original cover (IUCN 1988a). Threats to this remaining forest cover include fragmentation and acceleration of large-scale agriculture and ranching projects, commercial logging, and the construction of hydroelectric dams (Rivas *et al.* 1999, ch. 5) such as the Itaipu hydroelectric dam on the borders of Paraguay and Brazil.

Habitat destruction has increased throughout the species' range in Paraguay, and is believed to be one of the greatest threats to its survival in Paraguay (Verdade 1998, pp. 18–19). Approximately 98 percent of Paraguay's population lives in Paraguay's eastern region, with a population density of 18.6 per km^2, compared with 0.2 per km^2 in the western, or Chaco, region. A contributing factor is that in the eastern region, the soil is more suitable for cultivating crops; therefore, cattle production, forestry products, and agricultural crops are widespread in the range of this species in Paraguay. Paraguay's main agricultural exports are soybeans and cotton (Harcourt and Sayer 1996; USDA FAS 2010, p. 2). Although the overharvest for commercial purposes, rather than habitat destruction or modification, was the primary reason for this species being listed under the Act, threats have changed. Now, the largest threat seems to be habitat destruction or modification due to agriculture and development of urban infrastructure, which still occur to a large extent in Paraguay, particularly within the range of broad-snouted caiman. Paraguay implemented a Zero Deforestation Law as of 2004; however prior to that law, its rate of deforestation was the second highest in the world (WWF 2006, p. 1). Despite the enactment of this law, the best available information indicates that this habitat destruction and modification still significantly affect this species. We have no indication that conditions have improved in Paraguay since this species was listed under the Act; rather, habitat loss has increased. Therefore, we find that the present and threatened destruction, modification, or curtailment of its habitat in Paraguay continues to be a threat to broad-snouted caiman. However, we will review the information we receive during the comment period on this proposed rule.

In Uruguay, very little information has been collected about how habitat degradation affects the broad-snouted caiman. Based on available information, current threats to this species' habitat in Uruguay are likely due to agriculture and cattle ranching which occur within this species' range. Cattle and sheep farming in Uruguay occupy 60 percent of its land (Food and Agriculture Organization of the United Nations [FAO], p. 4). Other agricultural activities such as production for dairy, fodder for cattle, and crops such as rice consist of approximately 20 percent. Secondary, related effects related to agriculture are habitat degradation and pollution due to pesticide use, erosion, and altered ecosystems. The surveys conducted in the early 2000s indicate that caiman do exist in manmade habitats in northwestern Uruguay. However, the current amount of suitable habitat for this species in Uruguay is unknown. Researchers suggest that the apparent increase in this species' population may be due to the construction of agriculture impoundments, which provide habitat for broad-snouted caiman in recent decades (Borteiro *et al.* 2008, p. 248). In the area surveyed to determine caiman presence and abundance, impoundments were being used mainly for irrigation of rice (69 percent) and sugar cane crops (31 percent) in the Ñaquiñá stream basin. In the Lenguazo stream basin, 80 percent was used for irrigation of sugar cane and 20 percent was used for other food crops.

Two other factors that likely affect caiman habitat here are drought and hydroelectric dams (United Nations Environment Programme [UNEP] 2004, pp. 78–85; Borteiro *et al.* 2008, p. 248; Verdade *et al.* 2010, p. 20). Uruguay has experienced severe drought in the past few years (IPS NEWS 2011), which has had a significant effect on agricultural and cattle production, and this very likely affects caiman habitat. The construction and existence of hydroelectric dams to generate electricity may be an additional threat to the broad-snouted caiman (UNEP 2004, pp. 78–85). Uruguay is highly dependent on hydroelectricity, and these hydroelectric dams are within broad-snouted caiman habitat. Although we know these activities occur within the range of the broad-snouted caiman in Uruguay, there is very little

information regarding the status of the species in Uruguay. We have no evidence that there has been any change to the status of the species in Uruguay. We do not know population trends in Uruguay, and threats to the species' habitat such as agricultural activities, drought, and hydroelectric dams exist. There is no information to indicate that habitat modification or destruction has decreased such that the population trend is stable or increasing. Researchers here recommend more surveys of broad-snouted caiman at a larger scale in northern Uruguay to assess the usage of manmade habitats by caiman in order to apply this knowledge to caiman conservation and management strategies. Given the lack of evidence that indicates that Uruguay's population of broad-snouted caiman has either increased or has stabilized since its inclusion under the Act, we find that the present or threatened destruction, modification, or curtailment of its habitat or range continues to be a threat to the species in Uruguay.

Summary of Factor A for Bolivia, Brazil, Paraguay and Uruguay (Northern) DPS

In most of the range of this species, the habitat threats are very similar; however, a country's management actions (refer to factor D) may affect the status of the species. In Bolivia, Brazil, Paraguay, and Uruguay, although these countries are making progress with respect to habitat modification and destruction and some have adopted relevant conservation laws (see Factor D), habitat loss continues to occur. Increasing human populations, development of hydroelectric projects, and draining of wetlands also have caused habitat degradation. Conversion of broad-snouted caiman habitat to agricultural plantations occurs commonly in these countries, and adequate management plans in these countries for this species are not in place. We seek information on the status of the species, particularly in Bolivia, Brazil, Paraguay, and Uruguay, as part of this proposed rule. Although the species is widespread, we have no information to indicate that the status of the species has changed in these four countries, and there is little to no population trend information available in these countries. Based on a review of the best available information, we find the destruction, modification, or curtailment of its habitat or range in these four countries is a continued threat to the species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The overharvest for commercial purposes was the primary reason for the broad-snouted caiman's inclusion in Appendix I of CITES and subsequent listing under the Act. The species suffered due to effects of unregulated exploitation between 1930 and 1980. Protections were put in place because the species had suffered substantial population declines throughout its range due to overexploitation through the commercial crocodilian skin trade. Under this factor, we examine how overutilization within each country has changed since the species was listed under the Act, and then we discuss this factor with respect to international trade and its regulation through CITES.

Argentine DPS

In Argentina, illegal hunting was widespread through the late 1980s, but decreased in the early 1990s (Micucci and Waller 1995, pp. 81–108) due to the proliferation of caiman ranching programs and the enforcement of national and provincial regulations (see Factor D). Between the 1940s and early 1990s, reports indicate that more than 700,000 caiman skins were produced from Corrientes Province in Argentina (estimated in Micucci and Waller (1995) in Piña *et al.* 2010, p. 4). Some of these skins were illegally obtained; however, there has been no report of illegal hunting since 1998 (Larriera *et al.* 2008, p. 143). Since the species was listed both under CITES and the Act, a significant change in public perception and awareness regarding this species has occurred. Now, the species is thought to be managed sustainably in Argentina (Jelden 2010, pers. comm.; Verdade *et al.* 2010, p. 19; Woodward 2010, p. 3). Local people participate in caiman ranching programs in which they locate nests and harvest eggs from these nests (Larriera *et al.* 2008; Verdade *et al.* 2010, p. 19) and take them to captive-rearing facilities. These individuals, primarily cattle-ranchers, are compensated for the eggs. The communities within the range of the broad-snouted caiman have an understanding of the caiman ranching program, and they no longer have a need or desire to illegally hunt these animals because individuals earn an income from harvesting eggs. This is due in part to a long-standing public awareness program and significant community involvement in protecting this species (Larriera *et al.* 2008, p. 145).

The Government of Argentina has had a long history of research and active management of its population of the broad-snouted caiman, particularly since 1990. Currently, there are seven ranching programs registered with the Federal government in Argentina. Three of them function as educational programs, with no commercial exploitation. The non-commercial ranching operations are in Entre Ríos, Chaco, and Corrientes Provinces. There are four commercial ranching programs: two in Formosa Province, one in Corrientes Province, and one in Santa Fe Province. The ranching programs in Formosa, Corrientes, and Chaco are for both the broad-snouted caiman and yacare caiman. The programs in Entre Ríos and Santa Fe are for only broad-snouted caiman. Each ranching program showed an increase in the number of eggs collected since the program began. This indicates an upward trend in population numbers.

Ranching Programs in Argentina

On cattle ranches in Argentina, landowners commonly channelize the wetlands to increase grazing land for cattle; this subsequently provides suitable caiman habitat. Most habitat preferred by the caiman (swamps with heavy vegetation) are considered unproductive agricultural land. In the past, the swampy areas have been drained for conversion to agricultural lands. However, by placing an economic value on preserving caiman habitat through compensation from the ranching program, habitat destruction can be reduced. Additionally, by providing monetary compensation to ranch employees for each nest they locate, there is incentive for ranch owners and employees to protect the wetlands and caiman nesting areas. As of 2006, there had been a 30 percent increase in the caiman nesting areas on cattle ranches where caiman egg harvest occurs (Larriera *et al.* 2006). For example, the caiman nesting area of the Lucero Ranch (Estancia) in Santa Fe Province was 830 ha (2,051 ac) in 1990, and increased to 1,060 ha (2,619 ac) in 2004. Larriera suggests that one reason for the increased population density may be due to a decline in the practice of burning and drying wetlands for economic reasons, in addition to the dispersion of female broad-snouted caiman into new habitat due to the caiman ranching program.

In the wild, as many as 60 to 70 percent of the eggs do not hatch (Smith and Webb 1985; Woodward *et al.* 1989, p. 124). Estimated survival of hatchlings in the wild has been as low as 10 to 20 percent, depending on environmental conditions (*e.g.,* frost and predation can alter survival (Aparicio and Rios 2008,

p. 109); see discussion under Factors C and D below). In Woodward, researchers explained that in order to increase survival rate of American alligators, the practice of egg collection has been implemented to preclude embryo mortality due to factors such as depredation, flooding, and desiccation. In the Argentina ranching program, to increase survivability, young caiman are reintroduced to their former nesting site after they have passed critical life stages in which they are more susceptible to factors such as predation and nest flooding (Larriera 2003). Removal and incubation of eggs taken from the wild increases hatchling survivability because the larger the caiman is, the greater likelihood it has of long-term survival in the wild (Woodward *et al.* 1989, p. 124).

High mortality can occur during the first few weeks of incubation in the wild; one study found that highest embryo mortality of alligator eggs occurred between days 7 and 16 of incubation (Joanen and McNease 1987 in Woodward *et al.* 1989, p. 124). In the caiman ranching programs in Argentina, the practice is to remove all eggs from all the nests in collection areas that are accessible and not flooded, burned, depredated, or necessary for survival studies (Larriera 1995). Between the months of December and January, eggs are collected soon after laying. Caiman ranch project managers pay cattle ranch employees for each located nest, and each nest is assigned a number. The nests are marked so that young hatched and reared in captivity can be returned to the same area. Each ranching program maintains records of how many are collected, how many are reared, and how many individuals are later released back into the wild.

Artificial incubation has been demonstrated to enhance hatch success in addition to early development of hatchlings (Ferguson 1985, Joanen and McNease 1987 in Woodward *et al.* 1989, p. 124). Caiman ranching programs in Argentina use various methods in artificial incubation to increase the success rate. For example, small temperature variances can be used to accelerate the growth of hatchlings. Animals reared at a slightly higher temperature (22.4 °C; 72.3 °F) grow faster than those maintained at a lower temperature (18.2 °C; 65 °F) (Piña and Larriera 2002, pp. 387–391). Hatching success and survival are not negatively affected by artificial incubation temperature, as long as it is within the appropriate temperature range for this species (Piña *et al.* 2003, pp. 199–201). For broad-snouted caiman, eggs incubated at 29 or 31 °C (84–88 °F) produced 100 percent females, while at 33 °C (91 °F) 100 percent males were produced. Incubation at a higher temperature (34.5 °C; 94 °F) induced production of both sexes (Simoncini *et al.* 2008, p. 231).

Young are marked by removing selected caudal scutes corresponding to hatch year and nest origin. Hatchlings are raised for nine months in concrete pools until November, when some are removed for reintroduction to the original nest site. The decision on how many young will be retained in captivity for commercial production; as well as how many will be reintroduced to the wild depends on the status of the wild population in the area from which the eggs were harvested. Argentina provides reports to the CITES Secretariat in accordance with CITES Resolution Conf. 11.16. If there is a high population density in the wild, more young are retained and raised for commercial purposes.

Chaco Province

El Cachapé Wildlife Refuge (Refugio de Vida Silvestre El Cachapé) is a conservation and sustainable-use project developed through an agreement between a private landowner and Fundación Vida Silvestre Argentina in Chaco Province. The project was established in 1996 for the ranching of both yacare and broad-snouted caiman (Cossu *et al.* 2007, p. 330), and it also conducts ecotourism activities. El Cachapé is in the center of the harvest area, and encompasses 1,760 hectares (ha) (4,349 acres (ac)). Between 1998 and 2004, the Chaco program collected 4,867 eggs and released 1,236 yearlings (Larriera and Imhof 2006) within the Chaco Province. A population survey conducted over 60,000 ha (148,263 ac) of the harvest area in Chaco Province indicates that there was an average density of 4.0 individuals of *C. latirostris* per km during the 1999–2000 study period (Prado 2005), but we are unaware of any additional data collected since that time. This conservation ranching program is working towards increasing population numbers of this species in the Chaco Province (Verdade 2010, pp. 18–22). We are requesting additional information pertaining to population data for all provinces, including the Chaco Province, as part of this proposed rule.

Corrientes Province

An experimental program in Corrientes Province was established in 2004, based on an agreement between a company called Yacaré Porá S.A. and the Dirección Provincial de Recursos Naturales (Provincial Directorate of Natural Resources, Corrientes Province). The experimental program initially conducted surveys and included a small-scale collection of eggs. Population surveys for yacare and broad-snouted caiman in the province were conducted to determine the feasibility and biological sustainability of a commercial ranching program (Micucci and Waller 2005) and now this is a commercial operation. In preparation for the experimental ranching program in the Province of Corrientes, the numbers of broad-snouted caiman nests in three study areas were surveyed. In nesting seasons 2004–2005 and 2005–2006, one area maintained its number of nests and the other two areas showed increases resulting in a total of 165 nests observed in the first season; and 265 nests observed in the second season (Larriera *et al.* 2008). The first egg collection was conducted in 2005 (Jenkins *et al.* 2006, p. 27). In late 2010, 500 hatchlings were released. As of 2010, there were 4,736 hatchlings and 12,793 individuals over one year in age in captivity (Larriera 2010, p. 1).

Formosa Province

The program in Formosa Province (in the most northern part of the species range in Argentina) was established in 2001, based on an agreement between a company called Caimanes de Formosa S.R.L. and the Dirección de Fauna y Parques de Formosa (Directorate of Wildlife and Parks of Formosa) under the Ministry of Production (Jenkins *et al.* 2006). The first egg collection in Formosa Province was in 2002. The Formosa program collected 13,050 eggs between 2002 and 2004, and released 1,265 young (Larriera and Imhof 2006). Surveys of the combined yacare caiman and broad-snouted caiman populations in Formosa have indicated that the wild population densities have increased from a range of 2.3 to 66 individuals per km in 2002 (Siroski 2003; Siroski and Piña 2006), to 22 to 238 individuals per km in 2008 (Piña *et al.* 2008).

Santa Fe Province

The Santa Fe program (in the southernmost part of the species' range in Argentina) is the largest of the approved programs; this province has the largest population of broad-snouted caiman in the wild in Argentina. Proyecto Yacaré, in the province of Santa Fe, Argentina, was established in 1990, with an agreement between the Ministry of Agriculture of the Province of Santa Fe and a non-governmental organization called Mutual del Personal Civil de la Nación (Benefit of Civil Personnel of the Nation) to improve the

conservation status of the broad-snouted caiman and its wetland ecosystem (Larriera and Imhof 2000). The northern part of the Province of Santa Fe contains 80 percent of the wild broad-snouted caiman population in Argentina. Early on, the Caiman Specialist Group (CSG) identified ranching programs in Argentina as a high priority for species conservation (Verdade 1998, pp. 18–19). It described the program in Santa Fe Province as a model for other Argentine provinces where habitat still remains and the wild population is large. In 1999, the management for sustainable use of broad-snouted caiman reached a commercial scale (Verdade 1998, pp. 18–19).

Between 1990 and 2004, the Santa Fe program harvested 1,410 of 1,945 identified nests and produced 35,197 hatchlings from 47,948 eggs (Larriera and Imhof 2006). Of the hatchlings that survived, 15,120 yearlings were returned to the wild and 14,046 were retained for commercial use (Larriera and Imhof 2006). The number of nests found in the collection area increased from 14 (1990–1991) to 439 (2003–2004), resulting in an increase from 372 to 12,031 eggs collected per year during the same time period (Larriera and Imhof 2006). Mean clutch size in Santa Fe Province has been reported to be 35 eggs per nest, and the natural incubation period is around 70 days (Larriera and Imhof 2000).

As of 2004, monitoring the wild population in the collection areas indicated that the broad-snouted caiman population in Santa Fe increased 320 percent since the project began (Larriera and Imhof 2006). Observed wild population densities increased from an average of 2 to 8 individuals per km in 1990, to 20 to 120 individuals per km in 2008–2009 (Larriera and Siroski 2010, p. 2). This program has resulted in increased numbers of broad-snouted caiman in the wild in areas surveyed and expansion of nesting areas (Larriera and Imhof 2000, 2006; Larriera *et al.* 2006). The distribution of the wild population has expanded into areas from which the species had formerly disappeared (Larriera *et al.* 2005).

International Trade and Regulation Under CITES

CITES provides varying degrees of protection to more than 32,000 species of animals and plants that are traded as whole specimens, parts, or products. CITES regulates the import, export, and reexport of specimens, parts, and products of CITES-listed plant and animal species (also see discussion under Factor D). Trade is managed through a system of permits and certificates that are issued by the designated CITES Management and Scientific Authorities of each CITES Party (*http://www.cites.org*). In the United States, the Scientific and Management Authorities reside in the U.S. Fish and Wildlife Service.

Under CITES, a species is listed in one of three appendices; listing in each Appendix has a corresponding level of protection (*i.e.,* regulation of international trade), and different permit requirements (CITES 2007). Appendix II allows for commercial trade and includes species requiring regulation of international trade in order to ensure that trade of the species is compatible with the species' survival. At times a species may be listed as endangered under the U.S. Endangered Species Act, and concurrently listed under Appendix II of CITES, rather than the more restrictive Appendix I, which does not allow commercial trade of wild specimens, except under limited circumstances. Although CITES Appendix II allows for commercial trade, in order for specimens of this species to be traded internationally, a determination must be made that the specimens were legally obtained; and that the export will not be detrimental to the survival of the species in the wild. CITES Appendix I includes species that are ''threatened with extinction which are or may be affected by trade.'' Appendix I has a further restriction that a CITES import permit must be issued by the importing country after finding that the specimen will not be used for primarily commercial purposes.

The World Conservation Monitoring Centre (WCMC) at UNEP manages a CITES Trade Database on behalf of the CITES Secretariat. Each Party to CITES is responsible for compiling and submitting annual reports to the CITES Secretariat regarding their country's international trade in species protected under CITES. The trade database (*www.unep-wcmc.org/citestrade*) indicates that between 2000 and 2009, 11,837 broad-snouted caiman parts and products (primarily leather and skins), plus an additional 1,210 kilograms (2,662 pounds) of such parts and products were exported. The vast majority of exports were from Argentina, and the database did not indicate any trends in the trade data to cause concern. There were very few exports from the other range countries during the period reviewed.

If the proposed rule to reclassify the Argentine population and accompanying Special Rule are finalized, then commercial exports of broad-snouted caiman products from Argentina to the United States would be allowed, provided that certain conditions are met. We do not believe this potential increase in international trade is likely to threaten or endanger wild broad-snouted caiman based on Argentina's management and monitoring of the caiman ranching program. However, exports of broad-snouted caiman and its parts and products from the rest of the range countries would still be regulated under CITES Appendix I and as endangered under the Act.

Summary of Factor B for Argentine DPS

In Argentina, the legal harvest does not appear to have negative impacts on the species based on reported harvest, nest counts, and egg harvest trends (Larriera *et al.* 2010, pp. 1–2; Larriera and Siroski 2010, pp. 1–5). We believe that adequate protections are in place under Federal and provincial law and regulations in Argentina. Broad-snouted caiman that hatched in captivity and were released near their former nesting site have successfully matured and reproduced in the wild (Larriera *et al.* 2006). For example, during the summers of 2001 and 2002, seven females released as part of Proyecto Yacaré were recaptured while attending their nests. The females were between 9 and 10 years old at the time of capture. Their clutch sizes and hatching success were similar to those of wild females of unknown age also captured during the season. Mortality of eggs and hatchlings in the wild can exceed 95 percent (Hutton 1984 in Larriera *et al.* 2008, p. 154). This indicates that released ranched yearlings can survive and reproduce at least as successfully as their wild counterparts, and may have a greater rate of survival.

Research also indicates that this practice of releasing a percentage of captive-hatched juveniles is a valuable management tool for crocodilian species. This is because releasing them into the wild at an age of 8–10 months, rather than at hatching, has been shown to enhance their chances of survival (Elsey *et al.* 1992, p. 671). Survivorship in juvenile alligators has been shown to be a function of size, with survivorship increasing as size increases (Woodward *et al.* 1989, p. 124).

Wild populations in the collection areas are increasing based on egg collection and density surveys (Larriera *et al.* 2010). Despite the fact that all accessible nests are harvested in the collection areas and the number of yearlings returned to the wild is variable, the Santa Fe program has resulted in higher population densities. Increased reproduction in released

animals, a greater number of nests located and harvested, and the observation of broad-snouted caiman in areas where they had been extirpated (Larriera and Imhof 2006; Larriera *et al.* 2008, pp. 143–172) have also been observed. What may be most important to the survival of the broad-snouted caiman, however, is that nesting areas are now protected by local inhabitants who have an economic interest in maintaining the wild populations. Due to public awareness programs and monetary incentives for locals who collect eggs, there has been no report of illegal harvest since 1998.

The information reported on ranching programs indicate increased population numbers in Argentina of this species based on nest counts and egg harvest reports (Jenkins *et al.* 2006, pp. 26–27). For example, in the 1991 season in Santa Fe, 10 nests were harvested; 14 nests were located, and 237 hatchlings were produced. In 2003, 228 nests were located, 304 were identified, and 5,638 hatchlings were produced (p. 27). The current population survey methods used in Argentina are not entirely reliable as a tool for establishing direct relationships with populations in the wild, but they provide a general idea of the increase in caiman numbers. Prior determination of density or absolute abundance of nests prior to the removal of eggs is a more reliable way of determining the population numbers. Although there is not accurate population trend data for this species in the wild (Micucci 2010 pers. comm.), we consider the egg harvest data to be the best available information. Micucci points out that the information provided directly by nest counts and night surveys is more reliable and direct than egg harvest counts, at least in environments with large fluctuations in water mass, which is the case of this species, particularly in Argentina (2010 pers. comm.). We acknowledge that the current population survey methods used in Argentina are not the most reliable means of providing population estimates of this species in the wild; however, the data collected indicate an upward trend in population numbers for this species.

A secondary concern in the management of this species in Argentina is there may be inadequate oversight by provincial governments when extracting eggs from nests, movement of eggs, and tracking the origin of these eggs (this also applies to Factor D, the *Inadequacy of Regulatory Mechanisms*). Additionally, the level of independent or outside evaluation of the ranching programs in Argentina is unclear and there may be a lack of transparency in monitoring. This may be indicative of a need for stronger involvement by the provincial and federal governments or the need for a stronger legal framework at the provincial level to regulate or monitor these activities. However, despite these concerns, the reports on the broad-snouted caiman conservation program in Argentina do indicate that the population is increasing, and the program is being actively monitored within the country. The government of Argentina oversees the ranching program in Santa Fe Province, and Santa Fe contains the largest population of broad-snouted caiman in the wild.

The species is not overutilized in Argentina and overutilization is unlikely to be a threat to the population in the future. Annual reporting under CITES may alert us to any new threat of overutilization in Argentina. We are seeking information on the status of the species in Argentina as part of this proposed rule. However, based on a review of the best available information, and in the absence of conflicting new information, we find no evidence that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the broad-snouted caiman throughout its range.

Bolivia, Brazil, Paraguay, and Uruguay (Northern) DPS

One of the primary threats to the species before it was listed in CITES Appendix I in 1975 was uncontrolled international trade. In Bolivia, Brazil, Paraguay, and Uruguay, this species is listed in Appendix I of CITES. International trade primarily for commercial purposes is restricted from Bolivia, Brazil, Paraguay, and Uruguay due to the species' Appendix I status under CITES. The UNEP–WCMC trade database did not indicate any unusual trends in the species' trade with respect to these countries.

Beginning in the 1940s, the broad-snouted caiman was hunted commercially for international trade in its leather, which is commonly reported to be of higher quality than that of other caiman species (Brazaitis 1987 in Verdade *et al.* 2010, pp. 1–2). However, since the time the species has been protected by CITES and the Act, this factor is no longer a threat to the species in these countries.

In Bolivia, caiman is used for its fat, meat, and leather products (Aparicio and Rios 2008, p. 112). It is also killed out of fear by humans. In the Chaco province of Bolivia, there were reports of the species attacking and killing pigs and other small cattle (Pacheco in Embert 2007, p. 55), but these incidences do not seem to occur frequently. No other recent data are available in Bolivia for this species.

In Brazil, small amounts of illegal harvest are reported to still occur in some areas (Verdade *et al.* 2010, p. 19) and in Uruguay (Borteiro *et al.* 2006, p. 102). In northeastern Brazil, illegal hunting still supplies local markets for meat in small cities along the São Francisco River basin. The meat is sold as salted carcasses like codfish, and is actually called ''São Francisco codfish'' (Verdade 2001a). Hunting for meat also occurs in some parts of Uruguay (Borteiro *et al.* 2006, p. 104). However, species experts concluded that illegal hunting is no longer a major threat to the species due to improved protection, costs and consequences of illegal hunting, and the availability of legal skins (Verdade 1998, pp. 18–19). People in the past justified hunting caiman primarily for food. Many fishermen also killed caiman because caiman feed on the fish in their fishing nets, and caiman also destroy their nets (Filogonio *et al.* 2010, p. 964). Thus, current levels of hunting pressure may have only localized impacts.

In Paraguay, in the past, the broad-snouted caiman may have been subject to greater hunting pressure than *C. yacare* because the quality of its skin is considered finer (Scott *et al.* 1990, pp. 45–46). Hunting was almost uncontrolled through 1990, and some caiman populations almost disappeared. However, small residual populations were increasing in size when last surveyed in places where they and their habitat were protected (Scott *et al.* 1990, pp. 45–46).

In Uruguay, broad-snouted caiman was never legally hunted for commercial purposes (Verdade 1998, pp. 18–19), although illegal hunting has been observed (Borteiro *et al.* 2006, p. 97). Uruguay's standard of living, literacy rate, and large urban middle class (*http://www.state.gov,* accessed March 14, 2011) are reported to be quite high compared with other countries within this species' range, which may account for the lack of commercial hunting in this country. There is no indication that overutilization occurs in Uruguay.

Summary of Factor B for the Bolivia, Brazil, Paraguay, and Uruguay (Northern) DPS

We are seeking information on the status of the species in Bolivia, Brazil, Paraguay, and Uruguay as part of this proposed rule. Domestic use still occurs, but levels remain low. Any incidence of hunting or harvest that may occur does not significantly affect the species. Based on a review of the best available

information, and in the absence of conflicting new information, we find that overutilization for commercial, recreational, scientific, or educational purposes is no longer a threat to the broad-snouted caiman in Bolivia, Brazil, Paraguay, and Uruguay.

Factor C. Disease or Predation

Argentina

There is little information on diseases that affect wild broad-snouted caiman (Huchzermeyer 2003; Jacobson 2007). In 1999, the Field Veterinary Program of the Wildlife Conservation Society and Fundación Vida Silvestre Argentina studied the health of caiman populations in the wild and in captivity at the El Cachapé ranching operation in Chaco Province, Argentina. There was a very low incidence of pathogens and no evidence of infectious disease in either population. Health conditions of ranched and wild animals continue to be monitored in Argentina (Uhart and Moreno 2000; Uhart *et al.* 2000).

There is naturally a high level of predation on eggs and hatchlings. In the wild, an average of 60 to 70 percent of the eggs do not hatch, usually due to nest flooding or predation (Hutton 1984; Larriera 2003). One study found that the rate of depredation in a low rainfall season was significantly higher than normal seasons; resulting in over half of the nests being depredated in some areas (Larriera and Piña 2000). During particularly dry seasons, high predation may occur due to easier access to nests, and the increased distance between the nest and the water. This may be in part due to less maternal attention when the mother is in the water. At such times, up to 50 percent of entire clutches in forest nests and 80 percent of clutches along levees and dykes can be consumed by predators (Larriera and Imhof 2006). Predators of eggs and hatchlings include herons (*Ardea cocoi*), storks (*Ciconia ciconia*), crested caracaras (*Caracara plancus*), iguanas (*Tupinambis merianae*), and carnivorous mammals such as the South American gray fox (*Pseudalopex griseus*) (Larriera and Imhof 2006). Other research found that no more than 10 percent of the hatchlings typically survive to adulthood (Larriera and Imhof 2006). This level of mortality from predation is considered normal in caiman populations.

In Argentina, methods are taken to minimize the effects of predation. To decrease the death rate due to predation, ranched young are returned to the wild only after they are past the critical first year when the risk of predation is greatest (Larriera and Imhof 2006). Even when nests are depredated, females can rebuild these nests (Larriera and Piña 2000). Clutch sizes can be as high as 129 eggs in a good year (Larriera 2002, p. 202). Based on surveys conducted and numbers of eggs collected, it appears that caiman populations are continuing to increase in Argentina. Although disease and predation are sources of mortality, it is not a limiting factor for population growth.

Summary of Factor C for the Argentine DPS

Disease and predation normally occur in populations, and the best available scientific and commercial information does not indicate that either of these factors negatively affect the broad-snouted caiman here such that they rise to the level of threats to the species. Neither disease nor predation are a significant factor affecting this species. Therefore, we do not find that disease nor predation threatens this distinct population segment of the broad-snouted caiman, now or in the future.

Bolivia, Brazil, Paraguay, and Uruguay (Northern) DPS

In the range countries of Bolivia, Brazil, Paraguay, and Uruguay, there is no indication that disease and predation are affecting the broad-snouted caiman such that this factor threatens the species. Therefore, we do not find that disease nor predation threatens this population segment of the broad-snouted caiman.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Argentine DPS

The broad-snouted caiman was listed in Appendix I of CITES on July 1, 1975. This listing (also refer to the factor B discussion) requires strict regulation of international movement of this species, which may only be authorized in ''exceptional circumstances,'' and trade for commercial purposes is generally prohibited. In 1990, the ''Projecto Yacaré'' was implemented in Argentina based on a concept of conservation through sustainable use of broad-snouted caiman. The objective of the program was to improve the status of the population in two ways: by creating incentives for landowners and by increasing public awareness in the local communities to encourage the increase of caiman populations. Another objective was to conserve natural wetlands on which caimans depend (Larriera *et al.* 2008a, pp. 143–145). These programs also reintroduce captive-raised individuals to the wild. Since the government of Argentina began the management and monitoring of the Argentine population of broad-snouted caiman, population estimates for Argentina have indicated an upward trend. Through this program, a significant increase in egg collection and harvest has occurred in the wild; over 30,000 hatchlings from eggs collected have been released into the wild since the program began.

On September 18, 1997, at the 10th meeting of the Conference of the Parties (''CoP10''), the Argentine population of broad-snouted caiman was transferred to Appendix II based on a proposal from Argentina. The proposal described the increased population status of the species in Argentina, and a ranching program that had contributed to its increase (CoP10 Doc. 10.86, CoP10 Prop. 10.1, Government of Argentina 1997). Appendix II allows for regulated commercial trade as long as the exporting country finds that the specimens were legally acquired and that the activity is not detrimental to the survival of the species. Exported skins must be tagged according to the CITES Resolution on a universal tagging system for the identification of crocodile skins (Resolution Conf. 11.12 (Rev. CoP15)).

A Resolution on a universal tagging system for the identification of crocodile skins was adopted by the Parties at CoP9, held in 1994. At CoP10 (1997, Harare, Zimbabwe), the CITES Secretariat reported that, to its knowledge, all range countries were effectively implementing the Universal Tagging System Resolution. *Caiman yacare* skins and products originating in Argentina have been imported into the United States with the appropriate CITES tags. This species was downlisted under the Act in 2000 to threatened status [65 FR 25867, May 4, 2000]. Adherence to the CITES tagging requirements has reduced the potential for substitution of illegal skins, which has reduced trade enforcement problems involving the similarity of appearance of skins and products among different species of crocodilians.

According to CITES Resolution Conf. 11.16 (Rev. CoP15), for trade in ranched specimens of species transferred from Appendix I to Appendix II to occur, a ranching program must: (1) Demonstrate that the program is beneficial to the conservation of the local population; (2) identify and document all products to ensure that they can be readily distinguished from products of Appendix I populations; (3) maintain appropriate inventories and harvest-level controls and mechanisms in the program to monitor wild populations; and (4) establish sufficient safeguards in

the program to ensure that adequate numbers of animals are returned to the wild if necessary and where appropriate.

At the national level, Argentine Law 22.421 prohibits all use of fauna that is not specifically authorized (Micucci and Waller 1995). In 2000, when the experimental operations began commercial production of broad-snouted caiman, Resolution 283/00 was enacted by the Government of Argentina under Law 22.421. This law approves the inter-province transit and export of caiman products from ranching operations that comply with CITES Resolution 11.16, but trade in specimens from any other sources (*i.e.,* not from registered ranching operations) is illegal. Resolution 283/00 also establishes minimum requirements for ranching operations. One of the requirements is that there must be a baseline population study covering at least 40 percent of the province in which the operation is located. The study must be conducted for at least 2 years (Larriera and Imhof 2006). The study results must be approved by the province and then submitted to the national authorities (Dirección de Fauna y Flora Silvestres [Directorate of Wild Fauna and Flora]) for final approval. The Registro Nacional de Criaderos (National Registry of Breeding Centers, Resolution 26/92) lists registered ranching operations. In provinces with nationally approved ranching programs, the provincial government must conduct an annual evaluation of the population status of the species in their province and submit it to the Dirección de Fauna y Flora Silvestres. According to Larriera (pers. comm. 2006), all the surveys are conducted under the supervision of members of the CSG. Ranching operations and harvests of wildlife that are not transported across provincial boundaries or exported are controlled through regulation at the provincial level (Larriera and Imhof 2006).

National Legislation To Implement CITES

Information available to the Service indicates that Argentina has protected-species and protected-areas legislation under the jurisdiction of specific ministries or departments that control activities that impact the broad-snouted caiman and its habitat. The Federal legal framework within the Government of Argentina is particularly robust. The CITES National Legislation Project (*www.cites.org,* SC59 Document 11, Annex p. 1) deemed that the Government of Argentina has national legislation that is considered Category 1, which means they meet all the requirements to implement CITES. With respect to CITES, based on the trade data (see Factor B discussion) and other data and information available to the Service, the Argentina appears to be adequately enforcing international trade through its legal framework.

Summary of Factor D for Argentine DPS

Monitoring indicates that management efforts within Argentina are working. The population in Argentina, based on reports provided to the Service and the CITES Secretariat, appears to be increasing. All Parties that conduct ranching operations approved in accordance with Resolution Conf. 11.16 are obligated to report to the CITES Secretariat (Jenkins *et al.* 2006, p. 3). While some habitat loss and degradation remain in Argentina, these threats have been reduced based on intensive management efforts of this species. These reports suggest that the populations of this species are increasing in Argentina. While we do not have complete population survey information in Argentina, all indications suggest that the wild population is well managed and is increasing. Wildlife such as the caiman can be advantageously used in commerce if management is sufficient to maintain suitable habitats, and if harvest is at a level that allows maintenance of healthy and sustainable populations. Broad-snouted caiman, under such conditions, can provide revenue to pay for its own management and stimulate local economies. Therefore, we find that although the strong management of the species through local programs promoting egg harvest and hatchling release has reduced threats to this species and its habitat, threats (see factor A) do still exist. With respect to international trade of broad-snouted caiman parts and products, we find that CITES is an adequate regulatory mechanism throughout its range. We will continue to monitor the status of the species in Argentina; however, based on the best available information, we find that this factor is not a threat to the species in Argentina.

Bolivia, Brazil, Paraguay, and Uruguay (Northern) DPS

Bolivia's current environmental legislative framework represents a significant improvement since the 1992 World Summit on Sustainable Development in Rio de Janeiro began a foundation for the sustainable and equitable use of the country's environmental resources and to control destructive practices. This framework has had a positive effect on Bolivia's economic development, especially in the forestry sector, where it provided clearly defined roles for institutional oversight and control. To its credit, Bolivia has become the world leader in the area of certified production forests (Byers *et al.* 2008, p. 31). Because there has been a growing concern regarding indigenous people's rights, workers' rights, and reductions in the environmental impact of logging, there has been an increase in third-party certifiers such as the Forest Stewardship Council (FSC) in the global wood trade (www.fsc.org, accessed March 14, 2011). FSC certification ensures that wood is responsibly harvested. In Bolivia, most of the FSC certified operations are large-scale private enterprises that are able to pay for audits and maintain access to international markets for certified products. However, management issues in Bolivia still remain. The ratification of autonomy statutes by the Departments of Santa Cruz, Pando, Beni, and Tarija, and their conflict with the National government is currently one of the more contentious issues (Byers *et al.* p. 33). The most important implications of this movement toward enhanced departmental authority and responsibility relate to land-use planning and authority over land tenure matters. This issue is still in flux and this transfer towards decentralized governance could have negative repercussions on the broad-snouted caiman.

With respect to caiman management in Bolivia, a management plan for *Caiman latirostris* population recovery and conservation in Tarija department was proposed for 2006–2009. It is unclear whether the plan was implemented, and no updated data have been provided with respect to the species' status in Bolivia (Aparicio and Ríos 2008). The best available information does not indicate that the regulatory mechanisms in place are adequate to sufficiently protect this species. Populations of broad-snouted caiman are still considered to be severely depleted in Bolivia (Aparicio and Ríos 2008, p. 104; Verdade *et al.* 2010, p. 19). Habitat loss, destruction, and modification (refer to Factor A discussion) are still occurring and are not expected to decrease in the future (Anderson and Gibson 2006, p. 99), thus suggesting that existing regulatory mechanisms are insufficient to ameliorate or remove the threat from habitat destruction.

Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. In the past, the Brazilian government, through various

regulations, policies, incentives, and subsidies, has actively encouraged development of previously undeveloped lands in southeastern Brazil, which helped facilitate the large-scale habitat conversions that have occurred throughout the Atlantic Forest (Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874; Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2). These development projects include logging, housing and tourism developments, and expansion of plantations (Collar *et al.* 1992, p. 776; Ratter *et al.* 1997, pp. 227–228; Barnett *et al.* 2000, pp. 377–378; Saatchi *et al.* 2001, p. 874; Butler 2007, p. 3). These projects impact potentially important sites for this species and would affect habitat within and adjacent to established protection areas in Brazil (Collar *et al.* 1992, p. 776; Barnett *et al.* 2000, p. 377–378). The Brazilian government has encouraged development of dams for hydroelectric power, irrigation and expansion of agricultural practices, primarily for soybean production (Braz *et al.* 2003, p. 70; Hughes *et al.* 2006, pp. 51–56; Verdade *et al.* 2010, pp. 18–19). Brazil's competing priorities make it difficult to enforce regulations that protect broad-snouted caiman habitat.

In 2003, Brazil established a nationwide research and development program, called Programme for Biology, Conservation and Management of Brazilian Crocodilians (Coutinho and Luz 2008 in Velasco *et al.* 2008 p. 80). The broad-snouted caiman was listed as an endangered species in Brazil until 2003, at which time the species was withdrawn from the Brazilian List of Endangered Fauna (The Brazilian Institute of Environment and Renewable Natural Resources [IBAMA] 2003). Despite these initiatives, we have no information to indicate that regulatory mechanisms exist to effectively limit or restrict habitat destruction for this species. We do not have information indicating that impacts to this species (*e.g.,* development of dams for hydroelectric power, and expansion of agricultural practices, primarily for soybean production) have been or will be adequately addressed through existing regulatory mechanisms at the sites where this species is found or in its habitat. Based on data and information available to the Service, we believe that the existing regulatory mechanisms in Brazil are inadequate to ameliorate the current threats to this species in Brazil.

In Paraguay, the environmental situation has improved; Paraguay has completed many of its governmental reform objectives (USAID 2004, p. 4). However, there are still concerns; land is still being converted to soybean plantations, and land ownership is still a concern in Paraguay (USAID 2004, pp. 3, 8). Paraguay's objectives are to work towards more effective regulation and utilization practices. Environmental laws, such as the ''Zero Deforestation Law'' and ''Valuation and Retribution of Environmental Services Law'' have had the most significant impact during the past five years. These measures have declared wild areas be protected from the private sector.

While we acknowledge that Paraguay is making significant progress in the conservation of its resources, existing regulatory mechanisms are still inadequate. For example, Paraguay provides a legal framework for the forestry sector under the Forest Law of 1973. Some of the aspects of Paraguay's forest law are that it establishes incentives for reforestation and defines forest land in categories such as reserves, production forests, or semi-protected forests; and sets up regulations and fines to protect the forest resources. The export of logs was prohibited in 1972, but illegal export was still occurring in the 1980s, especially from the northeastern part of the country (IIED and USAID 1985, in Harcourt and Sayer 1996). In part, this has been due to insufficient financial resources. The 1973 Forest law was problematic in the sense that not only does it allow people to colonize forest reserves, but it also considers forested lands unproductive, and therefore little attempt is made to prevent deforestation. Agricultural land has a much higher economic value than forested land (in some regions it can be as high as $1,000 U.S. dollar (USD) per ha, compared with $400 USD per ha for forested land), which represents an obvious economic incentive for deforestation. In 1991, Paraguay's annual deforestation rate was estimated to be 4.7 percent (WWF 1991, cited in Brooks *et al.* 1992), which at the time was higher than that of any other South American country.

More recently, Paraguay enacted a Forest Conversion Moratorium (also known as the Zero Deforestation Law) in 2004 which is still in place. The law prohibits the conversion of forested areas in Paraguay's eastern regions. Restrictions are difficult to implement and enforce. For example, the area in the northernmost part of Paraguay known as the Alto Paraguay was once a refuge for wildlife such as the caiman. This was primarily due to its isolation and difficulty in accessing the habitat. However, when the Paraguayan government promoted a waterway in the Paraguay–Paraná Basin known as the Hidrovía development project, the Alto Paraguay forest became an area of land speculation. It is unclear what is occurring in this area now and how this activity may affect the broad-snouted caiman.

There is no evidence that effective protective measures have been undertaken to conserve the broad-snouted caiman. The existing regulatory mechanisms currently in place for broad-snouted caiman in Paraguay do not adequately address the factors threatening the species. We are seeking information and data on the status of the species in Paraguay as part of this proposed rule; however, in the absence of new information, we find that regulatory mechanisms in Paraguay are inadequate to protect broad-snouted caiman.

Uruguay's richest biodiversity is found in its wetlands and its growing practice of rice production. Its economy is highly dependent on exports, and the agricultural sector contributes 11 percent of its total gross domestic product (GDP). One of Uruguay's environmental problems is that rice paddies are replacing marshlands, and it is causing degradation of these ecosystems. While some species are capable of adapting to these human-made ecosystems, environmental degradation is associated with the conversion of natural habitat to rice paddies.

The government has taken steps to address the issue of wetland protection and biodiversity. Uruguay has developed methods aimed at improving issues associated with rice production such as harmful residue generated during processing and is working at methods of reducing the impact caused by residue accumulation. In the past, the rice hulls were burned which emitted toxic chemicals into the atmosphere and contributed to air pollution. Now, Uruguay is working towards composting the rice hulls, which has minimal environmental impact. Additionally, Uruguay became a member of the Ramsar Convention in 1984 and a member of the Convention on Biological Diversity in 1992 in order to increase wetlands protection. Uruguay enacted law number 16.170 which directly addresses the conservation of wetlands, and specifically mandates that the areas assigned for wetlands conservation must be respected by rice farmers.

Although Uruguay has made progress in improving its environmental laws and recognizes the importance of protecting its biodiversity, enforcement

of its laws regulating protection of this species may still be insufficient in some areas (Brazaitis *et al.* 1996). This has primarily been due to the limited resources available to local enforcement agencies, as well as the remoteness and inaccessibility of much of the caiman habitat. We have no information to indicate that the existing regulatory mechanisms effectively limit or restrict habitat destruction for this species. Although Uruguay is making progress in its protection of natural resources, it is unclear how this species is being monitored and managed in Uruguay. We do not have sufficient evidence that impacts to this species (*e.g.,* conversion of wetlands to rice paddies and subsequent environmental degradation that occurs) have been or will be adequately addressed through existing regulatory mechanisms at the sites where this species is found or in its habitat. Based on the best available information, we find that the existing regulatory mechanisms continue to be inadequate to ameliorate the current threats to this species in Uruguay.

National Legislation To Implement CITES in Bolivia, Brazil, Paraguay, and Uruguay

The CITES National Legislation Project (*www.cites.org,* SC59 Document 11, Annex p. 1) deemed that the Governments of Brazil and Uruguay have national legislation that is considered Category 1, which means they meet all the requirements to implement CITES. Bolivia was described as being in Category 2, both with a CITES legislation plan and draft legislation, but not enacted, and Paraguay was described as Category 2 with no plan and only draft legislation. Overutilization (unsustainable trade in skins, parts, and products) was the primary reason that this species was listed in CITES Appendix I and also listed as endangered under the ESA. However, now, overutilization is no longer a concern for this species. With respect to CITES, based on the trade data (see Factor B discussion), we find that the governments of Bolivia, Brazil, Paraguay, and Uruguay are adequately enforcing international trade through their respective legal frameworks.

Summary of Factor D for Bolivia, Brazil, Paraguay, and Uruguay (Northern) DPS

With respect to international trade of broad-snouted caiman parts and products, we find that CITES is an adequate regulatory mechanism in Bolivia, Brazil, Paraguay, and Uruguay. However, the best available scientific and commercial information indicates that broad-snouted caiman continues to be threatened by the inadequacy of the existing regulatory mechanisms in Bolivia, Brazil, Paraguay, and Uruguay to ameliorate the effects of habitat loss and degradation. Management efforts vary within the range of broad-snouted caiman. Each country has both unique and overlapping factors that affect the species. In some cases, there was an abundance of information available regarding potential threats to the species, and in other cases, there was little to no information available, particularly regarding the adequacy of regulatory mechanisms with respect to this species.

In Bolivia, Brazil, Paraguay, and Uruguay, the best available information indicates that the primary threat to the species is habitat loss (Factor A). Related to this factor is the inability of the governments, at a national, provincial, or regional level, to adequately enforce mechanisms to address threats. In these countries, there is little monitoring data on broad-snouted caiman. Based on a review of the information available, we were unable to find that regulatory mechanisms are adequate in Bolivia, Brazil, Paraguay, and Uruguay to protect broad-snouted caiman from threats including habitat loss.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Following is a rangewide threats analysis in which we evaluate whether other natural or manmade factors affect the continued existence of the broad-snouted caiman throughout its range because the information available is not specific to each DPS. This evaluation is not specific to each country unless specified as such.

Pesticides and Endocrine Disruptors

Approximately 10 to 15 percent of pesticides applied in agricultural activities actually reach target organisms, and the remainder is dispersed into the atmosphere, soil, and water (Poletta *et al.* 2009, p. 96). In Argentina, soy, which requires the application of pesticides, occupies 16 million hectares, and land dedicated to soy plantations continues to expand (Larriera *et al.* 2008, p. 165). A study regarding the genotoxicity of the herbicide formulation Roundup® (glyphosate) was conducted in Argentina on broad-snouted caiman. Glyophosate is a broad-spectrum herbicide used widely in weed control. In this study, specimens of broad-snouted caiman were exposed to various concentrations and compounds of glyphosate commonly used in agriculture, particularly on soy plantations. Not only did the study result in deformities of exposed caiman, but it also resulted in mortalities (Poletta *et al.* 2009, p. 98). One form of glyphosate, Cycloposphamide, in particular, caused malformations in the exposed caiman, causing 90 percent embryo mortality (Poletta *et al.* 2009, p. 97). Another study found that exposure to pesticides increases the egg weight loss and decreases hatchlings weight of *Caiman latirostris* (Beldomenico *et al.* 2007, p. 246), which negatively affects species' fitness. This study evaluated responses based on exposure to atrazine and endosulfan, which are commonly used in agriculture. Egg weight loss was significantly greater for those eggs treated with an environmentally relevant dose of atrazine (0.2 parts per million) (ppm) and relatively low doses of endosulfan (2 and 20 ppm) (Beldomenico *et al.* 2007, p. 249). The study was done on captive-held broad-snouted caiman; the impact of these pesticides on natural caiman populations is unknown. However, extrapolations can be made that exposed smaller hatchlings would have less chance of survival during their first year, thus affecting the population dynamics of the species. Impaired embryonic growth may also be occurring when exposed to contaminated water and food (Beldomenico *et al.* 2007, p. 250).

Potential effects from contamination by commonly used pesticides such as aldrin, chlordane, endrin, lindane, methoxyclor, toxaphene, DDT, parathion, endosulfan, malathion, and carbaryl, similar to that found in the studies conducted on captive broad-snouted caiman, are likely to occur and affect this species in the wild. Farmers are not well trained in proper application methods, often over-applying agrochemicals, applying them under inappropriate physical or environmental conditions, and not following appropriate handling, washing, and storage protocols (Byers *et al.* 2008, p. 26). Despite regulations governing the use of these and other pesticides, more oversight and resources are needed to monitor their use and effects on this species. Such pesticide use is likely to occur throughout the species' range.

In Bolivia, contamination of aquatic systems from agrochemicals occurs in some areas, particularly in Santa Cruz and Cochabamba (Byers *et al.* 2008, p. 26). In the lowlands of Santa Cruz Department, for example, where broad-snouted caiman may exist, agro-industrial development is leading to increased use of agrochemicals. Soy,

sunflower, cotton, and sugarcane are the main crops, and to a lesser extent coffee, cacao, and rice are grown. Mechanized agriculture on large areas with poor soil has led to the increased use of agrochemicals such as fertilizers and pesticides that are often applied by aerial spraying. Despite increasing oversight, 17 pesticides have been banned in Bolivia but are nevertheless freely sold in local markets and routinely used (Byers *et al.* 2008, p. 26).

Although we recognize that pesticides will result in mortalities and decreased fitness in some individuals, the best available information does not indicate that pesticides threaten this species. Studies have been conducted in Argentina, where similar pesticides are used, and reproduction and survival rates of broad-snouted caiman in Argentina appear to be currently robust. Populations currently remain stable or are increasing in Argentina; and the species has even expanded its range in some areas (Borteiro *et al.* 2008, pp. 244–249; Verdade *et al.* 2010, pp. 18–22). This is an indication of the species' intrinsic resilience and adaptability. Although environmental contaminants such as pesticides and herbicides likely affect individuals, there is no evidence that they currently pose a threat to the species.

Specifically, with respect to endocrine disrupters, studies in other crocodile species have been conducted to examine their effects (Rainwater *et al.* 2008, pp. 101–109). Vitellogenin induction is a useful biomarker to examine exposure and response to endocrine disruptors, specifically environmental estrogens. The vitellogenin gene is a biomarker frequently used to detect estrogenic effects in male fish. However, this study concluded that endocrine disruptors do not appear to have negative effects on crocodile species in the wild. To the best of our knowledge, endocrine disrupters are not a threat to broad-snouted caiman.

We recognize that environmental contaminants may affect individuals, especially given the potential for long-term bioaccumulation of contaminants during the species' life. However, we do not have information or data on the extent of the impact, if any, that environmental contaminants currently have on the species. An inadvertent aspect of the research referenced above indicated that the removal of eggs from the wild and hatching in a captive environment can actually have a beneficial effect. If eggs are negatively affected by exposure to pesticides through either a decrease in fitness or mortality in the wild, it would be of benefit to remove them shortly after females lay eggs to reduce or eliminate exposure to environmental contaminant. Regardless of this aspect, based on the best available scientific and commercial information available, we currently do not find that exposure to pesticides or other environmental contaminants is a threat to the species.

Human Conflict

Although it is commonly known that human conflict with caiman occurs, this is not a significant factor affecting the species. The most recent status survey of broad-snouted caiman by the Crocodile Specialist Group indicates that the principal threats to this species are habitat destruction, illegal hunting in localized areas (in some states of Brazil, where caiman population is low), and construction of large hydroelectric dams (Verdade *et al.* 2010, p. 1). In Bolivia, a survey indicated that 92 percent of individuals said that they hunted broad-snouted caiman to avoid the danger of an attack. This was more common when caiman were found in cattle watering areas such as ponds and agricultural impoundments near their homes. However, the actual impacts are unknown; the survey was anecdotal. Most broad-snouted caiman populations in Argentina occur on privately owned wetlands. In Chaco, Argentina, local people have been known to kill caiman, not only for food, but out of fear that these animals will attack them or their livestock and poultry (Prado 2002, Aparicio and Rios 2008, p. 112). Based on interviews with ranchers, landowners and police, it is estimated that approximately 30 to 40 wild caiman per year are killed for food, and about 50 per year are killed out of fear (Larriera 2006, pers. comm.). These killings often occur during the dry season, when caiman move to ponds that are closer to human-populated areas. To counter these fears, biologists have been working with local communities through the caiman ranching project at the El Cachapé Wildlife Refuge in Argentina. One aspect of this program was that they developed an educational campaign in local schools. The students also participate in the ranching project on the refuge. The project has produced two educational Web sites, www.yacare.net and www.chicos.net, that describe the conservation and ecology of caiman species in Argentina.

In Argentina, because there is incentive for local communities and villagers in the range of the species to conserve broad-snouted caiman, conflict and killing of caiman for food, although it occurs, do not occur to the extent that it rises to the level of a threat. Throughout the rest of the species' range, human conflict with broad-snouted caiman occurs sporadically and may result in the death of some individual caiman. However, the best available scientific and commercial information does not indicate that human conflict occurs to the extent that it is a threat to the species. Therefore, relative to the population size, human conflict does not appear to be a threat to the species.

The broad-snouted caiman, like other wildlife, is a victim of collisions with motor vehicles while crossing roadways. This results in the mortality of about 200 animals per year (Larriera, pers. comm. 2006). Broad-snouted caiman often successfully cross roads in areas containing sparse human developments. Development of high volume transportation corridors in broad-snouted caiman habitat may inhibit their movements between habitat patches, potentially reducing connectivity among water bodies generally inhabited by broad-snouted caiman. However, these mortality events do not occur to such an extent that they are a significant factor affecting the species.

Fire Ants

The red fire ant, *Solenopsis invicta,* is an extremely aggressive species. It is originally from central South America and is distributed throughout a large variety of habitats (Folgarait *et al.* 2005 in Parachú-Marcó *et al.* 2008, pp. 1–2). It completely occupies the area of distribution of broad-snouted caiman. This is an opportunistic, aggressive species and is able to reach high population densities. The fire ant prefers total or partial exposure to the sun, and apparently is attracted by sources of protein, sugar, and lipids as well as high levels of humidity. Because broad-snouted caiman generally nest in fairly open habitats, and its nests are raised, they provide an ideal source of protection for *S. invicta* colonies from rains during the summer. Allen *et al.* (1997, pp. 318–320) showed that red fire ants affect the success of hatching, causing the death of unborn embryos in the nest, and possibly preventing the female from opening the nest when her hatchlings call. In Argentina, these ants use broad-snouted caiman nests to set up their new colonies (Larriera 2006, personal communication), and have been documented to decrease hatching success by 20 percent (Parachú-Marcó *et al.,* 2005, pp. 1–2). The severity and magnitude of long and short term effects of fire ants on broad-snouted caiman populations is currently unknown.

Although fire ants have the potential of being a localized threat, particularly in disturbed areas, the best available information does not indicate that this factor affects the species such that it is a threat to the species throughout all or a significant part of its range.

Drought and Flooding

This species has survived large-scale droughts and floods in the past (Larriera 2003), but high rainfall can lead to reduced hatching success from flooding (Larriera and Piña 2000). Recent caiman counts suggest that populations declined somewhat during 2002–2003 and 2007–2008 (Micucci *et al.* 2007, Larriera *et al.* 2008). This was attributed to cyclic drought conditions during the early 2000s (Micucci *et al.* 2007, Larriera *et al.* 2008). The harvest of broad-snouted caiman eggs during the 2009 season was drastically reduced in Corrientes, Santa Fe, and Formosa Provinces also due to a severe drought. However, in 2010, wetlands recovered due to heavy rains, and egg harvest in 2010 was approximately 30 percent higher than the historical average (Larriera and Siroski 2010, pp. 1–2). However, drought and flooding does not occur to such an extent that they are a significant factor affecting the species.

Climate Change

The term ''climate'' refers to an area's long-term average weather patterns, or more specifically, the mean and variation of surface variables such as temperature, precipitation, and wind, whereas ''climate change'' refers to any change in climate over time, whether due to natural variability or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007, pp. 6, 871). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional and ocean basin scales, recent observed changes in long-term trends include: A substantial increase in precipitation in eastern parts of North American and South America, northern Europe, and northern and central Asia; declines in precipitation in the Mediterranean, southern Africa, and parts of southern Asia; and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007, p. 30). Examples of observed changes in the physical environment include an increase in global average sea level and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007, p. 30).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599). Highlights of these projections include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts in various regions of the world (Solomon *et al.* 2007, p. 8). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change (Prinn *et al.* 2011, pp. 527, 529).

As is the case with all models, there is uncertainty associated with projections due to assumptions used, data available, and features of the models. Despite this, however, under all models and emissions scenarios the overall surface air temperature trajectory is one of increased warming in comparison to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models and associated assumptions, data, and analytical techniques continue to be refined, and thus projections are refined as more information becomes available (*e.g.,* Rahmstorf 2010 entire). For instance, observed actual emissions of greenhouses gases, which are a key influence on climate change, are tracking at the mid- to higher levels of the various scenarios used for making projections, and some expected changes in conditions (*e.g.* melting of Arctic sea ice) are occurring more rapidly than initially projected (Raupach *et al.* 2007, Figure 1, p. 10289; Comiso *et al.* 2008, p. 1; Pielke *et al.* 2008, entire; LeQuere *et al.* 2009, Figure 1a, p. 2; Manning *et al.* 2010, Figure 1, p. 377; Polyak *et al.* 2010, p. 1,797). In short, the best scientific and commercial data available indicates that increases in average global surface air temperature and several other changes are occurring and likely will continue for many decades and in some cases for centuries (*e.g.* Solomon *et al.* 2007, pp. 822–829; Church 2010, p. 411).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. For instance, climate-associated environmental changes to the landscape, such as decreased stream flows, increased water temperatures, reduced snowpacks, and increased fire frequency, or other changes occurring individually or in combination, may affect species and their habitats. The vulnerability of a species to climate change impacts is a function of the species' sensitivity to those changes, its exposure to those changes, and its adaptive capacity (IPCC 2007, p. 883). As described above, in evaluating the status of a species the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all other stressors we assess, if the status of a species is expected to be affected that does not necessarily mean it is a threatened or endangered species as defined under the Act. Species that are dependent on specialized habitat types, limited in distribution, or occurring already at the extreme periphery of their range will be most susceptible to the impacts of climate change; however, the broad-snouted caiman has a wide distribution.

The information currently available on the effects of climate change and the available climate change models do not make sufficiently accurate estimates of location and magnitude of effects at a scale small enough to apply to the range of the broad-snouted caiman. Below is a discussion of data and research available, with which we can make inferences on the projected impacts to the broad-snouted caiman due to climate change, particularly the potential impacts of shifting global temperatures on sex ratios as well as the species' distribution.

A study conducted to determine climate change's projected impacts to the American crocodile (*Crocodylus acutus*) illustrates possible impacts to the broad-snouted caiman (Escobedo-Galván 2006, p. 131). This is significant because the sex of crocodiles is determined during incubation and is temperature-dependant. This study selected areas in Florida and western Mexico that contain American crocodiles, and predicted how increased temperatures could affect the geographical distribution and sex ratios of the species in Florida, the Caribbean, and Central America. It focused on the geographic distribution and sex ratios of American crocodiles in the present (2006), 2020, and 2050. It suggested that the geographic distribution and sex ratios of American crocodile populations in different parts of its range would change in response to temperature and sea-level parameters. Optimal growth in crocodilians has been found to occur around 31 °C

digestion diminishing below 29 °C (84 °F) (Coulson and Hernandez 1964, pp. 2–33; Coulson and Coulson 1986, pp. 585–588), which correlates with optimal temperatures for incubation.

According to Escobedo-Galván *et al.* 2008, increased global temperatures and sea level could in some ways benefit the American crocodile by significantly increasing its potential habitat and distribution. Through this we could infer that similar effects could occur in the broad-snouted caiman species. The study predicted that the distribution for the American crocodile would expand 69 percent in 2020 and 207 percent in 2050. This is an 81 percent increase in potential distribution from 2020 to 2050 (Escobedo-Galván *et al.* 2008, pp. 9–10). While the American crocodile is adapted to a narrow climate range (Escobedo-Galván *et al.* 2008, p. 5), the broad-snouted caiman's geographic distribution is one of the widest latitudinal ranges among all crocodilians (Schmidt-Villela *et al.,* 2008 p. 1). Broad-snouted caiman latitudinal range is between 5 °S to 32 °S (Simoncini *et al.* 2009, p. 191). As global temperatures increase, areas that are currently too cool to support broad-snouted caiman may become warm enough to support them in the future.

The study also predicted that increased global temperatures could have a negative impact on the sex ratios of the American crocodile. Like other crocodilian species, both the American crocodile and the broad-snouted caiman exhibit temperature-dependent sex determination. Temperature determines the proportion of males to females produced in nests (Escobedo-Galván *et al.* 2008, p. 4). In *C. crocodilus,* incubation temperatures greater than about 34 °C (93 °F) or less than 32 °C (90 °F) were found to produce females while temperatures between 32 and 34 °C (90 and 93 °F) generally produced males (Escobedo-Galván 2006, p. 133; Escobedo-Galván *et al.* 2008, p. 2). Thus, the production of males is entirely dependent upon a sustained incubation temperature range of only three degrees. In this study, incubation temperatures greater than 36 °C (97 °F) were found to be at the upper end of the tolerance range for these eggs and resulted in both death of embryos and stress to the surviving hatchlings (Escobedo-Galván *et al.* 2008, p. 2).

Although the study with respect to *C. crocodilus* predicted that by 2020, the sex ratio is expected to shift in favor of males, this did not appear to be the case for broad-snouted caiman. For broad-snouted caiman, one study indicated that eggs incubated at 29 °C or 31 °C (84 or 88 °F) produced 100 percent females, while at 33 °C (91.4 °F) 100 percent males were produced. Incubation at higher temperatures (34.5 °C; 94.1 °F) induced production of both sexes (Simoncini *et al.* 2008, p. 231).

There is conflicting information on how climate change could affect this species; it could benefit the species or have no significant impact. We are not able to make inferences based on a study on *C. crocodilus* in this case. Based on the data available, we do not currently have sufficient information to determine how changes in climate will affect this species at this time, particularly with respect to how it will affect the species' sex determination and distribution.

The broad-snouted caiman's geographic distribution is one of the largest latitudinal ranges among all crocodilians (Verdade and Piña 2006). Due to its variability in use of habitat, an expansion of the range of the broad-snouted caiman may occur, as it is more of a habitat generalist than other crocodile species.

Based on scenarios that do not assume explicit climate policies to reduce greenhouse gas emissions, global average temperature is projected to rise by 2–11.5 °F by the end of this century (relative to the 1980–1999 time period) (USGCRP 2011, p. 9). Optimal growth in crocodilians has been found to occur around 88 °F (31 °C), with appetites and effective digestion diminishing below 84 °F (29 °C). Although climate change may cause changes in the broad-snouted caiman distribution, especially given the crocodilian requirement for temperature dependent sex determination, we do not have any data to indicate that effects on the species due to climate change would have a detrimental effect, nor is climate change likely to become a threat in the foreseeable future. However, we are seeking information and data on the effects of climate change on the broad-snouted caiman as part of this proposed rule.

Summary of Factor E

Few, if any, other natural or manmade factors are anticipated to significantly affect the continued existence of the broad-snouted caiman in either DPS. We reviewed factors such as fire ants, human conflict, pesticides and endocrine disruptors, droughts and flooding, and climate change. With respect to climate change, we lack adequate local or regional models on how climate change would specifically affect the habitat in the broad-snouted caiman's range. Given that reliable, predictive models have not been developed for use at the local scale in Argentina, Bolivia, Brazil, Paraguay, and Uruguay, there is little certainty regarding the timing, magnitude, and net effect of climate change's impacts. Therefore, we find it is not possible at this time to make reliable predictions of climate change effects on the Argentine population or the Bolivia, Brazil, Paraguay, Uruguay population due to the current limitations in available data and climate models. We found no information that the other stressors evaluated under this factor significantly affect the survival of the species. Based on the best available information, we find that there are no other natural or manmade factors are not threats to either population segment.

Finding

We have carefully assessed the best available scientific and commercial information regarding the past, present, and future threats faced by the broad-snouted caiman throughout its range, and we have separately evaluated the population in Argentina (referred to as a distinct population segment, or DPS) and the Northern DPS which consists of Bolivia, Brazil, Paraguay, and Uruguay.

Argentine DPS

In Argentina, our status review found that, although some localized impacts to broad-snouted caiman still occur in Argentina, such as habitat modification, particularly due to agricultural development, the Government of Argentina has reduced threats associated with habitat loss and overutilization through its ranching program such that the species is not currently in danger of extinction. Through the five-factor analysis, we considered the progress made by Argentina towards addressing previous threats to this species. We took into consideration the conservation actions that have occurred, are ongoing, and are planned. Since listing under the ESA, the species' status has improved in Argentina based on the following:

- National and international laws and treaties have minimized the impacts of trade.
- Effective community-based ranching programs have been established.
- Population numbers appear to be increasing in Argentina based on nest counts and egg harvest data.

The primary factor that led to the listing of this species under the Act was overutilization. In Argentina, we find few threats to the species in the wild, though we find the DPS is still threatened by the present or threatened

destruction, modification, or curtailment of its habitat or range (Factor A). However, information regarding the caiman ranching program in Argentina indicates that the caiman is increasing in the wild in Argentina such that it is no longer in danger of extinction. The information indicates that the broad-snouted caiman population is now widespread throughout its historic range in Argentina, and it is found in comparable densities relative to other species of crocodilians. Recent surveys (Siroski 2004, 2006; Micucci *et al.* 2007; Piña *et al.* 2008) have found broad-snouted caiman in sampled populations at densities similar to the American alligator (Wood *et al.* 1985; Woodward 2008, p. 1). This supports our finding that the broad-snouted caiman populations are increasing in the wild. In the region that has had the oldest caiman ranching program (Santa Fe province); population trend information based on night counts during 1990–2002 indicates five of six populations increased during that period (Larriera and Imhof 2004). Recent data tracking of the success of hatching shows the percentage of hatchlings born from the harvested eggs has been above 70 percent in recent years, sometimes exceeding 80 percent (Larriera *et al.* 2008, p. 158).

As discussed under Factor B, removing eggs from the wild, rearing the young, and releasing them at an age where they can defend themselves more readily can be advantageous, because larger size in young crocodilians improves survivorship. Survivorship in juvenile crocodilians has been shown to be a function of size, with survivorship increasing as size increases (Elsey *et al.* 1992). For crocodilians, supplementing wild populations with captive-reared juveniles taken from eggs collected in the wild is a valuable tool for crocodilian management, because mortality of juveniles in the wild decreases with age and size.

Enforcement of existing national and international laws and treaties has minimized the potential impact of trade in Argentina, and available data strongly suggest that wild populations in Argentina are increasing (Piña *et al.* 2009). Exports from Argentina are carefully managed and commercial exports are limited to those caiman from managed programs. All indications suggest that Argentina has been quite successful in increasing its population of broad-snouted caiman through intensive management efforts. The population has increased as evidenced by an increase in population density, the identification of reproductive females previously released by the program, the expansion of the nesting areas, the increase in the quantity of harvested nests, and the observation of caiman in places where they had disappeared (Larriera *et al.* 2008, p. 172). Age classes reflect healthy reproduction and recruitment into a wild breeding population.

We find that the impacts previously identified in Argentina when the species was listed under the Act no longer are of sufficient magnitude such that it is endangered. Because the Argentine population of broad-snouted caiman satisfies both the discreteness and significance criteria as defined by the DPS Policy, we propose to reclassify the distinct population segment of the broad-snouted caiman (*C. latirostris*) in Argentina from its present endangered status under the Act to threatened status. As identified above, only one of the five listing factors currently poses a known threat to the broad-snouted caiman, namely, Factor A—the present or threatened destruction, modification, or curtailment of its habitat or range. Although not currently in danger of extinction due to the destruction, modification, or curtailment of its habitat, we find that it is likely to become so with the continued destruction of habitat in the foreseeable future. We have seen substantial progress in Argentina with respect to addressing threats to this species. In developing this proposed rule, we carefully assessed the best scientific and commercial data available regarding the threats facing this species, as well as the ongoing conservation efforts by Argentina. Consequently, we have determined that the Argentine DPS of the broad-snouted caiman should be reclassified to threatened.

Bolivia, Brazil, Paraguay, and Uruguay (Northern) DPS

In contrast, there is a lack of information about the broad-snouted caiman in Bolivia, Brazil, Paraguay, and Uruguay (Aparicio and Ríos 2008; Borteiro *et al.* 2008; Verdade *et al.* 2010, p. 20). In Bolivia, Brazil, Paraguay, and Uruguay, the best available information indicates that threats remain such that the species should retain its endangered status under the Act due to habitat degradation and the inadequacy of regulatory mechanisms (Factors A and D, respectively). Although we have very little data about the species in these countries and are unable to determine population numbers or trends, the best available information indicates that the species continues to face threats under Factors A and D in Bolivia, Brazil, Paraguay, and Uruguay such that the species remains currently in danger of extinction. Therefore, because this population segment satisfies the discreteness and significance criteria under the DPS policy, we find that the distinct population segment of the broad-snouted caiman in Bolivia, Brazil, Paraguay, and Uruguay should remain endangered under the Act. We will continue to monitor the status of the species throughout its entire range. Additionally, the broad-snouted caiman in Bolivia, Brazil, Paraguay, and Uruguay will remain listed in Appendix I of CITES.

Special Rule

Section 4(d) of the Act states that the Secretary of the Interior (Secretary) may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, provided that those prohibitions and exceptions are necessary and advisable to provide for the conservation of the species. A special rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

In some cases, caiman skins and other parts are exported to another country, usually for tanning and manufacturing purposes. The processed skins and finished products are exported to the United States. The rule prohibits importation or re-exportation of such skins, parts, and products if we determine that either the country of origin or re-export is engaging in practices that are detrimental to the conservation of caiman populations. The purpose of this rule is threefold. First, the rule accurately reflects the conservation status of the broad-snouted caiman. Second, we wish to promote the conservation of the broad-snouted caiman by ensuring proper management of commercially harvested caiman species in its range countries and, through implementation of trade controls (as described in the CITES Universal Tagging System Resolution), to reduce co-mingling of caiman specimens. Third, downlisting of the broad-snouted caiman Argentine DPS to threatened reconciles listings of the species in the Act and CITES.

This special rule: (1) Recognizes the positive recovery efforts and accomplishments of the government of Argentina in recovering the broad-snouted caiman to the extent that the species no longer meets the definition of endangered; (2) Provides increased regulatory flexibility; and (3) Helps streamline or eliminate review and permitting requirements, thus providing a net benefit to the broad-snouted caiman by providing incentives to countries who are conducting conservation efforts for the species. A special rule for this DPS allows U.S. commerce in their skins, other parts, and products from Argentina and countries of re-export if certain conditions are satisfied by those countries prior to exportation to the United States. Therefore, under section 4(d) of the Act, we determine, through this special rule, that it is necessary and advisable to provide for the conservation of the broad-snouted caiman in accordance with applicable laws.

Currently, the listing of the broad-snouted caiman from Argentina in Appendix II of CITES allows commercial trade under certain restrictions in the species, including parts and products. On May 4, 2000, the Service reduced restrictions on a similar species, the yacare caiman (*Caiman yacare*), by reclassifying it from endangered to threatened under the Act (65 FR 25867). That final listing rule included a special rule that exempts the commercial importation and re-exportation, under certain conditions, of yacare skins, parts, and products into and out of the United States from the Act's implementing regulatory prohibitions for threatened species under section 50 CFR 17.31. Our regulations at 50 CFR 17.42(c) set forth this special rule for threatened caiman, including, among others, the yacare (*C. yacare*), common caiman (*C. crocodilus crocodilus*), and brown caiman (*C. crocodiles fuscus* and *C. crocodiles chiapasius*). Section 17.42(c) allows the import, export, or re-export, or the interstate or foreign commerce of caiman skins, parts, and products without a threatened species permit otherwise required under 50 CFR 17.32, provided the requirements of this Special Rule and parts 13, 14, and 23 of 50 CFR are met.

We propose to add the Argentine DPS of the broad-snouted caiman to the special rule at 50 CFR 17.42(c). This special rule allows import, re-export, and interstate commerce of specimens and products originating only from Argentina. This proposed rule, in most instances, adopts the existing conservation regulatory requirements of CITES as the appropriate regulatory provisions. It would also allow interstate or foreign commerce. The proposed special rule would, if adopted, allow import and export of broad-snouted caiman parts and products and interstate or foreign commerce of this species without a permit under the Act as described at 50 CFR 17.42(c).

Finally, this special rule does not cover the importation of viable caiman eggs or live caimans into the United States. Importation of these two types of specimens will require an Endangered Species Act import permit and the appropriate CITES permit. This requirement will allow scrutiny of individual applications for importation of live caimans or eggs so as to prevent accidental introduction of these exotic species into the United States, which may have detrimental effects on U.S. native wildlife or ecosystems. Reexportation from the United States of caiman skins, other parts, and products will continue to require CITES documents. We find that it is not necessary or advisable for the conservation of the broad-snouted caiman to regulate interstate or foreign commerce of this species.

In addition, Argentina must continue to effectively implement the CITES Resolution on a universal tagging system for the identification of crocodile skins and must have adequate national legislation for the implementation of CITES. The special rule would also allow trade in broad-snouted caiman parts and products through intermediary countries only if the countries involved are effectively implementing CITES. Both the country of origin and intermediary countries must be effectively implementing the CITES Universal Tagging System Resolution. The intent of this special rule is to enhance the conservation of the broad-snouted caiman in Argentina, which is properly managing its broad-snouted caiman populations. By gaining access to commercial markets in the United States for broad-snouted caiman products, Argentina will be encouraged to continue its sustainable-use management programs. These programs require annual surveys of wild populations to ensure biological sustainability in participating provinces and reintroduction of ranched offspring to the wild. The programs also provide an economic incentive for local people to protect and expand broad-snouted caiman habitat.

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to reclassify the broad-snouted caiman in Argentina as threatened in the List of Endangered and Threatened Wildlife. This rule, if adopted, would also establish a special rule for the broad-snouted caiman in Argentina, which would allow the importation into the United States of skins and other parts and products from Argentina. This rule would also allow the import of specimens originally from Argentina reexported by other countries, if certain conditions are met by those countries prior to exportation to the United States. These conditions pertain to the implementation of a CITES Resolution on a universal tagging system for the identification of crocodile skins as well as provisions intended to support appropriate management for sustainable use of wild populations of *C. latirostris.* Thus, for specimens that do not qualify under the provisions of the special rule, prohibited activities requiring a permit under 50 CFR 17.32 would still include take; export or reimport; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce live animals, eggs, or gametes. In addition, changing the species' status under the Act will not decrease the level of protection provided by CITES.

Consistent with the requirements of sections 3(3) and 4(d) of the Act, as described above, this proposed rule contains a special rule to amend 50 CFR part 17.42(c) to allow commercial importation and reexportation, under certain conditions, of whole and partial skins, other parts, and products from broad-snouted caiman from Argentina without a threatened species import permit otherwise required by 50 CFR part 17, if all requirements of the special rule and 50 CFR parts 13 (General Permit Procedures), 14 (Importation, Exportation, and Transportation of Wildlife), and 23 (CITES) are met.

The reclassification of the broad-snouted caiman from Argentina to threatened and the accompanying special rule allowing commercial trade into the United States without threatened species import permits does not end protection for this species, which remains listed in Appendix II of CITES. To the contrary, the special rule complements the CITES universal tagging resolution. A benefit of this special rule is that it would reconcile the Act's requirements for the importation and exportation of Argentine broad-snouted caiman parts and products shipments into and from the United States with CITES requirements.

In summary, this special rule would prohibit the importation, exportation, and reexportation of specimens (skins, other parts, or products) of broad-snouted caiman originating from Argentina or imported from a country of manufacture or reexport unless the following conditions are met:

(1) Each Argentine broad-snouted caiman skin or part imported, exported, or reexported must be tagged or labeled in accordance with the CITES Resolution on a universal tagging system for the identification of crocodile skins. This does not apply to meat, skulls, scientific specimens, or products, or to the noncommercial import, export, or reexport of personal effects in accompanying baggage or household effects.

(2) Any countries reexporting Argentine broad-snouted caiman skins or parts must have implemented an administrative system for the effective matching of imports and reexports.

(3) Argentina and any intermediary country(s) must be effectively implementing CITES as described above. If we receive persuasive information from the CITES Secretariat or other reliable sources that a specific country is not effectively implementing CITES, we will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

In a limited number of situations in which the original tags from the country of export have been lost in processing the skins, we will allow whole skins, flanks, and chalecos into the United States if CITES-approved reexport tags have been attached in the same manner as the original tags and proper reexport certificates accompany the shipment. If a shipment contains more than 25 percent replacement tags, the U.S. Management Authority will consult with the Management Authority of the reexporting country before clearing the shipment. Such shipments may be seized if we determine that the requirements of the Convention have not been met.

Finally, this special rule would not cover the importation of viable caiman eggs, gametes, or live caimans into the United States. Importation of these specimens would require a threatened species import permit and the appropriate CITES permit or certificate. This requirement would allow scrutiny of individual applications for importation of live caimans, eggs, or gametes so as to prevent accidental introduction of this exotic species into the United States, which may have detrimental effects on U.S. native wildlife or ecosystems. Reexportation from the United States of caiman skins, other parts, and products will continue to require CITES documents. Interstate commerce within the United States in legally imported caiman skins, other parts, and products would not require U.S. threatened species permits.

This special rule would allow trade through intermediary countries. Countries are not considered as intermediary countries or countries of reexport if the specimens remain in Customs control while transiting or being transshipped through the country, and provided those specimens have not entered into the commerce of that country. However, the CITES Resolution on a universal tagging system for the identification of crocodile skins presupposes that countries of reexport have implemented a system for monitoring skins.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of conservation status, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies and groups, and individuals. The protection required of Federal agencies and the prohibitions against take and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or upon the high seas, with respect to any species that is proposed to be listed or is listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. Because the broad-snouted caiman's range does not include the United States, no critical habitat is being proposed for designation with this rule. Regulations implementing the interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, with respect to broad-snouted caiman, no Federal activities are known that would require consultation.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act and its implementing regulations at 50 CFR part 17.31, set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. As such, these prohibitions are applicable to the broad-snouted caiman. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing such permits are codified at 50 CFR part 17.32. Import into, export from, or reexport from the United States, as well as other prohibitions, including movement in the course of a commercial activity and sale in interstate or foreign commerce, of threatened species and their parts and products, are currently prohibited under the Act unless otherwise authorized. Authorizations for species listed as threatened under the Act may be made for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for other special purposes consistent with the purposes of the Act.

Monitoring

We will continue to monitor the status of this species in cooperation with the range countries.

Peer Review

In accordance with our joint peer review policy with the National Marine Fisheries Service, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least three appropriate independent specialists regarding the science in this proposed rule. The purpose of peer review is to ensure that listing, downlisting, and delisting decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period, on the specific assumptions and conclusions in this proposed downlisting of the Argentine population (DPS) of the broad-snouted caiman. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input and any additional information we received as part of our process of making a final decision on this proposal. Such communication may lead to a final decision that differs from this proposal.

References Cited

A complete list of the references used to develop this proposed rule is available upon request from the Endangered Species Program in our Headquarters office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this rule is Amy Brisendine, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 400, Arlington, Virginia 22203.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), the List of Endangered and Threatened Wildlife, revise the entries for ''Caiman, broad-snouted,'' ''Caiman, brown,'' ''Caiman, common,'' and ''Caiman, yacare'' under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Caiman, broad-snouted.	*Caiman latirostris*	Argentina, Bolivia, Brazil, Paraguay, Uruguay.	Bolivia, Brazil, Paraguay, Uruguay.	E	15	NA	NA
Caiman, broad-snouted.	*Caiman latirostris*	Argentina, Bolivia, Brazil, Paraguay, Uruguay.	Argentina	T	790	NA	17.42(c)
Caiman, brown	*Caiman crocodilus fuscus* (includes *Caiman crocodilus chiapasius*).	Mexico, Central America, Colombia, Ecuador, Venezuela, Peru.	Entire	T(S/A)	695	NA	17.42(c)
Caiman, common	*Caiman crocodilus crocodilus*.	Bolivia, Brazil, Colombia, Ecuador, French Guiana, Guyana, Peru, Suriname, Venezuela.	Entire	T(S/A)	695	NA	17.42(c)
Caiman, yacare	*Caiman yacare*	Argentina, Bolivia, Brazil, Paraguay.	Entire	T(S/A)	695	NA	17.42(c)
*	*	*	*	*	*		*

3. Amend § 17.42 by revising paragraph (c)(1)(i) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(c) * * *

(1) * * *

(i) *Threatened crocodilian* means any live or dead specimen of the following species:

(A) Broad-snouted caiman (*Caiman latirostris*) originating in Argentina;

(B) Brown caiman (*Caiman crocodilus fuscus,* including *Caiman crocodilus chiapasius*);

(C) Common caiman (*Caiman crocodilus crocodilus*);

(D) Yacare caiman (*Caiman yacare*);

(E) Nile crocodile (*Crocodylus niloticus*); and

(F) Saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile).

* * * * *

Dated: December 16, 2011.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–33602 Filed 1–4–12; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program; Direct Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0542; FRL–9502–2]

RIN 2060–AR07

Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is issuing a direct final rule identifying additional fuel pathways that EPA has determined meet the biomass-based diesel, advanced biofuel or cellulosic biofuel lifecycle greenhouse gas (GHG) reduction requirements specified in Clean Air Act section 211(o), the Renewable Fuel Standard Program, as amended by the Energy Independence and Security Act of 2007 (EISA). This direct final rule describes EPA's evaluation of biofuels produced from camelina oil, energy cane, giant reed, and napiergrass; it also includes an evaluation of renewable gasoline and renewable gasoline blendstocks, as well as biodiesel from esterification, and clarifies our definition of renewable diesel. We are also finalizing two changes to regulation that were proposed on July 1, 2011(76 FR 38844). The first change adds ID letters to pathways to facilitate references to specific pathways. The second change adds ''rapeseed'' to the existing pathway for renewable fuel made from canola oil.

This direct final rule adds these pathways to Table in regulation as pathways which have been determined to meet one or more of the GHG reduction thresholds specified in CAA 211(o), and assigns each pathway a corresponding D-Code. It allows producers or importers of fuel produced pursuant to these pathways to generate Renewable Identification Numbers (RINs), providing that the fuel meets the other requirements specified in the RFS regulations to qualify it as renewable fuel.

DATES: This rule is effective on March 5, 2012 without further notice, unless EPA receives adverse comment or a hearing request by February 6, 2012. If EPA receives a timely adverse comment or a hearing request, we will publish a withdrawal in the **Federal Register** informing the public that the portions of the rule with adverse comment will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0542, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov,* Attention Air and Radiation Docket ID EPA–HQ–OAR–2011–0542
- *Fax:* [Insert fax number].
- *Mail:* Air and Radiation Docket, Docket No. EPA–HQ–OAR–2011–0542, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, 20460, Attention Air and Radiation Docket, ID No. EPA–HQ–OAR–2011–0542. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0542. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: Vincent Camobreco, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–9043; fax number: (202) 564–1686; email address: *camobreco.vincent@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action. These new pathway determinations did not require new agricultural sector modeling and involved relatively straightforward analyses that largely relied upon work done for the RFS2 final rule. If EPA receives relevant adverse comment or a hearing request on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which portion of the rule is being withdrawn. Any distinct amendment, paragraph, or section of today's rule not withdrawn will become effective on the date set out above.

In the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to update Table 1 of § 80.1426 to add any additional renewable fuel production pathways or regulatory provisions which may be withdrawn from the direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. We will address all public

comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS)
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

III. What should I consider as I prepare my comments for EPA?

A. *Submitting information claimed as CBI.* Do not submit information you claim as CBI to EPA through *www.regulations.gov* or email. 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.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Identification of additional qualifying renewable fuel pathways under the renewable fuel standard (RFS) program

EPA is issuing a direct final rule to identify in the RFS regulations additional renewable fuel production pathways that we have determined meet the greenhouse gas (GHG) reduction requirements of the RFS program. This direct final rule describes EPA's evaluation of:

Camelina Oil (New Feedstock)

- Biodiesel and renewable diesel (including jet fuel and heating oil) — *qualifying as biomass-based diesel and advanced biofuel*
- Naphtha and liquefied petroleum gas (LPG) — *qualifying as advanced biofuel*

Energy Cane, Giant Reed, and Napiergrass Cellulosic Biomass (New Feedstocks)

- Ethanol, renewable diesel (including renewable jet fuel and heating oil), and naphtha — *qualifying as cellulosic biofuel*

Renewable Gasoline and Renewable Gasoline Blendstock (New Fuel Types)

- Produced from crop residue, slash, pre-commercial thinnings, tree residue, annual cover crops, and cellulosic components of separated yard waste, separated food waste, and separated municipal solid waste (MSW)
- Using the following processes — all utilizing natural gas, biogas, and/or biomass as the only process energy sources — *qualifying as cellulosic biofuel:*
  - Thermochemical pyrolysis
  - Thermochemical gasification
  - Biochemical direct fermentation
  - Biochemical fermentation with catalytic upgrading
  - Any other process that uses biogas and/or biomass as the only process energy sources

Esterification (New Production Process)

- Process used to produce biodiesel from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, non-food grade corn oil, Canola/rapeseed oil, and camelina oil—*qualifying as biomass-based diesel and advanced biofuel*

This direct final rule adds these pathways to Table 1 to § 80.1426 and assigns each pathway one or more D–Codes. This final rule allows producers or importers of fuel produced under these pathways to generate Renewable Identification Numbers (RINs) in accordance with the RFS regulations, providing that the fuel meets other definitional criteria for renewable fuel.

Determining whether a fuel pathway satisfies the CAA's lifecycle GHG

reduction thresholds for renewable fuels requires a comprehensive evaluation of the lifecycle GHG emissions of the renewable fuel as compared to the lifecycle GHG emissions of the baseline gasoline or diesel fuel that it replaces. As mandated by CAA section 211(o), the GHG emissions assessments must evaluate the aggregate quantity of GHG emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes) related to the full fuel lifecycle, including all stages of fuel and feedstock production, distribution, and use by the ultimate consumer.

In examining the full lifecycle GHG impacts of renewable fuels for the RFS program, EPA considers the following:

- Feedstock production—based on agricultural sector models that include direct and indirect impacts of feedstock production
- Fuel production—including process energy requirements, impacts of any raw materials used in the process, and benefits from co-products produced.
- Fuel and feedstock distribution—including impacts of transporting feedstock from production to use, and transport of the final fuel to the consumer.
- Use of the fuel—including combustion emissions from use of the fuel in a vehicle.

Many of the pathways evaluated in this rulemaking rely on a comparison to the lifecycle GHG analysis work that was done as part of the Renewable Fuel Standard Program (RFS2) Final Rule, published March 26, 2010. The evaluations here rely on comparisons to the existing analysis. EPA plans to periodically review and revise the methodology and assumptions associated with calculating the GHG emissions from all renewable fuel pathways.

A. Analysis of Lifecycle Greenhouse Gas Emissions for Biodiesel, Renewable Diesel, Jet Fuel, Naphtha, and Liquefied Petroleum Gas (LPG) Produced From Camelina Oil

1. Feedstock Production

Camelina sativa (camelina) is an oilseed crop within the flowering plant family Brassicaceae that is native to Northern Europe and Central Asia. Camelina's suitability to northern climates and low moisture requirements allows it to be grown in areas that are unsuitable for other major oilseed crops such as soybeans, sunflower, and canola/rapeseed. Camelina also requires the use of little to no tillage.[1] Compared to many other oilseeds, camelina has a relatively short growing season (less than 100 days), and can be grown either as a spring annual or in the winter in milder climates. [2] [3] Camelina can also be used to break the continuous planting cycle of certain grains, effectively reducing the disease, insect, and weed pressure in fields planted with such grains (like wheat) in the following year.[4]

Although camelina has been cultivated in Europe in the past for use as food, medicine, and as a source for lamp oil, commercial production using modern agricultural techniques has been limited.[5] In addition to being used as a renewable fuel feedstock, small quantities of camelina (less than 5% of total U.S. camelina production) are currently used as a dietary supplement and in the cosmetics industry. Approximately 95% of current US production of camelina has been used for testing purposes to evaluate its use as a feedstock to produce primarily jet fuel.[6] The FDA has not approved camelina for food uses, although it has approved the inclusion of certain quantities of camelina meal in commercial feed.[7]

Camelina is currently being grown on approximately 50,000 acres of land in the U.S., primarily in Montana, eastern Washington, and the Dakotas.[8] USDA does not systematically collect camelina production information; therefore data on historical acreage is limited. However, available information indicates that camelina has been grown on trial plots in 12 U.S. states.[9]

For the purposes of analyzing the lifecycle GHG emissions of camelina, EPA has considered the likely production pattern for camelina grown for biofuel production. Given the information currently available, camelina is expected to be primarily planted in the U.S. as a rotation crop on acres that would otherwise remain fallow during the camelina planting. Since substituting fallow land with camelina production would not typically displace another crop, EPA does not believe new acres would need to be brought into agricultural use to increase camelina production. In addition, camelina currently has only limited high-value niche markets for uses other than renewable fuels. Unlike commodity crops that are tracked by USDA, camelina does not have a well-established, internationally traded market that would be significantly affected by an increase in the use of camelina to produce biofuels. For these reasons, which are described in more detail below, EPA has determined that production of camelina-based biofuels is not expected to result in significant GHG emissions related to direct land use change since it is grown on fallow land. Furthermore, due to the limited non-biofuel uses for camelina, production of camelina-based biofuels is not expected to have a significant impact on other agricultural crop production or commodity markets (either camelina or other crop markets) and consequently would not result in significant GHG emissions related to indirect land use change. To the extent camelina-based biofuel production decreases the demand for alternative biofuels, some with higher GHG emissions, this biofuel could have some beneficial GHG impact. However, it is uncertain which mix of biofuel sources the market will demand so this potential GHG impact cannot be quantified.

a. Growing Practices

Current market conditions indicate that camelina will most likely be grown in rotation with wheat on dryland wheat acres replacing a period that they would otherwise be left fallow.[10] In areas with lower precipitation, dryland wheat farmers currently leave acres fallow once every three to four years to allow additional moisture and nutrients to accumulate and to control pests. Current research indicates that camelina could be introduced into this rotation in certain areas without adversely impacting moisture or nutrient accumulation (see Figure 1). Because camelina has shallow roots with drought resistant characteristics, the

[1] Putnam, D.H., J.T. Budin, L.A. Field, and W.M. Breene. 1993. Camelina: A promising low-input oilseed. p. 314–322. In: J. Janick and J.E. Simon (eds.), New crops. Wiley, New York.

[2] Moser, B.R., Vaughn, S.F. 2010. Evaluation of Alkyl Esters from Camelina Sativa Oil as Biodiesel and as Blend Components in Ultra Low Sulfur Diesel Fuel. Bioresource Technology. 101:646–653.

[3] McVay, K.A., and P.F. Lamb. 2008. Camelina production in Montana. MSU Ext. MT200701AG (revised). http://msuextension.org/publica–tions/AgandNaturalResources/MT200701AG.pdf.

[4] Putnam *et al.,* 1993.

[5] Lafferty, Ryan M., Charlie Rife and Gus Foster. 2009. Spring camelina production guide for the Central High Plains. Blue Sun Biodiesel special publication. Blue Sun Agriculture Research & Development, Golden, CO. *http://www.gobluesun.com/upload/Spring%20Camelina%20Production%20Guide%202009.pdf.*

[6] Telephone conversation with Scott Johnson, Sustainable Oils, January 11, 2011.

[7] See *http://agr.mt.gov/camelina/FDAletter11–09.pdf.*

[8] McCormick, Margaret. ''Oral Comments of Targeted Growth, Incorporated'' Submitted to the EPA on June 9, 2009.

[9] See *https://www.camelinacompany.com/Marketing/PressRelease.aspx?Id=25.*

[10] See Shonnard, D. R., Williams, L., & Kalnes, T. N. 2010. Camelina-Derived Jet Fuel and Diesel: Sustainable Advanced Biodiesel. *Environmental Progress & Sustainable Energy,* 382–392.

land can be returned to wheat cultivation the following year with moisture and soil nutrients intact quantitatively similar to a fallow year.[11]

[11] See Shonnard *et al.,* 2010; Lafferty *et al.,* 2009.

In addition, camelina uses the same equipment for harvesting as wheat; therefore, farmers would not need to invest in new equipment to add camelina to the rotation with wheat.[12]

[12] Wheeler, P and F. Guillen-Portal. 2007. Camelina Production in Montana: A survey study sponsored by Targeted Growth, Inc. and Barkley Ag. Enterprises, LLP (unpublished).

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Figure 1: Examples of Traditional Wheat and Camelina/Wheat Rotations

Example 1: Traditional Winter Wheat/Spring Wheat/Fallow Rotation

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Year 0										Winter Wheat Planting		
Year 1								Winter Wheat Harvest				
Year 2				Spring Wheat Planting				Spring Wheat Harvest				
Year 3										Winter Wheat Planting		

Example 2: Winter Wheat/Camelina/Spring Wheat Rotation

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Year 0										Winter Wheat Planting		
Year 1								Winter Wheat Harvest				
Year 2				Camelina Planting				Camelina Harvest				
Year 3				Spring Wheat Planting				Spring Wheat Harvest		Winter Wheat Planting		

Shaded cells indicate fallow months

Hatched line cells indicate growing moths

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b. Land Availability

USDA estimates that there are approximately 60 million acres of wheat in the U.S.[13] USDA and wheat state cooperative extension reports through 2008 indicate that 83% of U.S. wheat production is under non-irrigated, dryland conditions. Of the approximately 50 million non-irrigated acres, at least 45% are estimated to follow a wheat/fallow rotation. Thus, approximately 22 million acres are potentially suitable for camelina production. However, according to industry projections, only about 9 million of these wheat/fallow acres have the appropriate climate, soil profile, and market access for camelina production.[14] Therefore, our analysis uses the estimate that only 9 million wheat/fallow acres are available for camelina production.

c. Projected Volumes

Based on these projections of land availability, EPA estimates that at current yields (approximately 800 pounds per acre), approximately 100 million gallons (MG) of camelina-based renewable fuels could be produced with camelina grown in rotation with existing crop acres without having direct land use change impacts. Also, since camelina will likely be grown on fallow land and thus not displace any other crop and since camelina currently does not have other significant markets, expanding production and use of camelina for biofuel purposes is not likely to have other agricultural market impacts and therefore, would not result in any significant indirect land use impacts.[15] This assessment is based on a three year rotation cycle in which only one third of the 9 million available acres would be fallow in any given year. Yields of camelina are expected to approach the yields of similar oilseed crops over the next few years, as experience with growing camelina improves cultivation practices and the application of existing technologies are more widely adopted.[16] Yields of 1650 pounds per acre have been achieved on test plots, and are in line with expected yields of other oilseeds such as canola/rapeseed. Assuming average US yields of 1650 pounds per acre,[17] approximately 200 MG of camelina-based renewable fuels could be produced on existing wheat/fallow acres. Finally, if investment in new seed technology allows yields to increase to levels assumed by Shonnard *et al* (3000 pounds per acre), approximately 400 MG of camelina-based renewable fuels could be produced on existing acres.[18] Depending on future crop yields, we project that roughly 100 MG to 400 MG of camelina-based biofuels could be produced on currently fallow land with no impacts on land use.[19]

d. Indirect Impacts

Although wheat can in some cases be grown in rotation with other crops such as lentils, flax, peas, garbanzo, and millet, cost and benefit analysis indicate that camelina is most likely to be planted on soil with lower moisture and nutrients where other rotation crops are not viable.[20] Because expected returns on camelina are relatively uncertain, farmers are not expected to grow camelina on land that would otherwise be used to grow cash crops with well established prices and markets. Instead, farmers are most likely to grow camelina on land that would otherwise be left fallow for a season. The opportunity cost of growing camelina on this type of land is much lower. As previously discussed, this type of land represents the 9 million acres currently being targeted for camelina production. Current returns on camelina are relatively low ($13.24 per acre), given average yields of approximately 800 pounds per acre and the current contract price of $0.145 per pound.[21] See Table 1. For comparison purposes, the USDA projections for wheat returns are between $88–$105 per acre between 2010 and 2020. Over time, advancements in seed technology, improvements in planting and harvesting techniques, and higher input usage could significantly increase future camelina yields and returns.

TABLE 1—CAMELINA COSTS AND RETURNS

Inputs	Rates	2010 Camelina [22]	2022 Camelina [23]	2030 Camelina [24]
Herbicides:				
Glysophate (Fall)	16 oz. ($0.39/oz)	$7.00	$7.00	$7.00.
Glysophate (Spring)	16 oz. ($0.39/oz)	$7.00	$7.00	$7.00.
Post	12 oz ($0.67/oz)	$8.00	$8.00	$8.00.
Seed:				
Camelina seed	$1.44/lb	$5.76 (4 lbs/acre)	$7.20 (5 lbs/acre)	$7.20 (5 lbs/acre).
Fertilizer:				
Nitrogen Fertilizer	$1/pd	$25.00 (25 lb/acre)	$40.00 (40 lb/acre)	$75 (75 lbs/acre).
Phosphate Fertilizer	$1/pd	$15.00 (15 lb/acre)	$15.00 (15 lb/acre)	$15 (15 lb/acre).
Sub-Total		$67.76	$84.20	$119.20.
Logistics:				
Planting Trip		$10.00	$10.00	$10.00.
Harvest & Hauling		$25.00	$25.00	$25.00.

[13] 2009 USDA Baseline. See *http://www.ers.usda.gov/publications/oce091/.*

[14] Johnson, S. and McCormick, M., Camelina: an Annual Cover Crop Under 40 CFR Part 80 Subpart M, Memorandum, dated November 5, 2010.

[15] Wheeler, P. and Guillen-Portal F. 2007. Camelina Production in Montana: A survey study sponsored by Targeted Growth, Inc. and Barkley Ag. Enterprises, LLP.

[16] See Hunter, J and G. Roth. 2010. Camelina Production and Potential in Pennsylvania, Penn State University Agronomy Facts 72. See *http://pubs.cas.psu.edu/freepubs/pdfs/uc212.pdf.*

[17] Ehrensing, D.T. and S.O. Guy. 2008. Oilseed Crops—Camelina. Oregon State Univ. Ext. Serv. EM8953–E. See *http://extension.oregonstate.edu/catalog/pdf/em/em8953-e.pdf;* McVay & Lamb, 2008.

[18] See Shonnard *et al.,* 2010.

[19] This assumes no significant adverse climate impacts on world agricultural yields over the analytical timeframe.

[20] See Lafferty *et al.,* 2009; Shonnard *et al.,* 2010; Sustainable Oils Memo dated November 5, 2010,

[21] Wheeler & Guillen-Portal, 2007.

[22] See Sustainable Oils Memo dated November 5, 2010,

[23] Based on yields technically feasible. See McVey and Lamb, 2008; Ehrenson & Guy, 2008.

[24] Adapted from Shonnard *et al,* 2010.

TABLE 1—CAMELINA COSTS AND RETURNS—Continued

Inputs	Rates	2010 Camelina [22]	2022 Camelina [23]	2030 Camelina [24]
Total Cost		$102.76	$119.20	$154.20.
Yields	lb/acre	800	1650	3000.
Price	$/lb	$0.145	$0.120	$0.090.
Total Revenue at avg prod/pricing		$116.00	$198	$270.
Returns		$13.24	$78.80	$115.80.

While replacing the fallow period in a wheat rotation is expected to be the primary means by which the majority of all domestic camelina is commercially harvested in the short- to medium- term, in the long term camelina may expand to other regions and growing methods.[25] For example, if camelina production expanded beyond the 9 million acres assumed available from wheat fallow land, it could impact other crops. However, as discussed above this is not likely to happen in the near term due to uncertainties in camelina financial returns. Camelina production could also occur in areas where wheat is not commonly grown. For example, testing of camelina production has occurred in Florida in rotation with kanaf, peanuts, cotton, and corn. However, only 200 acres of camelina were harvested in 2010 in Florida. While Florida acres of camelina are expected to be higher in 2011, very little research has been done on growing camelina in Florida. For example, little is known about potential seedling disease in Florida or how camelina may be affected differently than in colder climates.[26] Therefore, camelina grown outside of a wheat fallow situation was not considered as part of this analysis.

The determination in this final rule is based on our projection that camelina is likely to be produced on what would otherwise be fallow land. However, the rule applies to all camelina regardless of where it is grown. EPA does not expect that significant camelina would be grown on non-fallow land, and small quantities that may be grown elsewhere and used for biofuel production will not significantly impact our analysis.

Furthermore, although we expect most camelina used as a feedstock for renewable fuel production that would qualify in the RFS program would be grown in the U.S., today's rule would apply to qualifying renewable fuel made from camelina grown in any country. For the same reasons that pertain to U.S. production of camelina, we expect that camelina grown in other countries would also be produced on land that would otherwise be fallow and would therefore have no significant land use change impacts. The renewable biomass provisions under the Energy Independence and Security Act would prohibit direct land conversion into new agricultural land for camelina production for biofuel internationally. Additionally, any camelina production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for international soybean production (soybean oil is the expected major feedstock source for U.S. biodiesel fuel production and thus the feedstock of reference for the camelina evaluation). Because of these factors along with the small amounts of fuel potentially coming from other countries, we believe that incorporating fuels produced in other countries will not impact our threshold analysis for camelina-based biofuels.

e. Crop Inputs

For comparison purposes, Table 2 shows the inputs required for camelina production compared to the FASOM agricultural input assumptions for soybeans. Since yields and input assumptions vary by region, a range of values for soybean production are shown in Table 2. The camelina input values in Table 2 represent average values, camelina input values will also vary by region, however, less data is available comparing actual practices by region due to limited camelina production. More information on camelina inputs is available in materials provided in the docket.

Table 2: Inputs for Camelina and Soybean Production

	Camelina			Soybeans (varies by region)						
	Inputs (per acre)		Emissions (per mmbtu fuel)	Inputs (per acre)			Emissions (per mmbtu fuel)			
N2O	N/A		22 kg CO2eq	N/A			9	-	12	kg CO2eq
Nitrogen Fertilizer	40	lbs	7 kg CO2eq	3.5 -	8.2	lbs	1	-	3	kg CO2eq
Phosphorus Fertilizer	15	lbs	1 kg CO2eq	5.4 -	21.4	lbs	0	-	2	kg CO2eq
Potassium Fertilizer	10	lbs	0 kg CO2eq	3.1 -	24.3	lbs	0	-	2	kg CO2eq
Herbicide	2.75	lbs	3 kg CO2eq	0.0 -	1.3	lbs	0	-	2	kg CO2eq
Pesticide	0	lbs	0 kg CO2eq	0.1 -	0.8	lbs	0	-	2	kg CO2eq
Diesel	3.5	gal	5 kg CO2eq	3.8 -	8.9	gal	7	-	20	kg CO2eq
Gasoline	0	gal	0 kg CO2eq	1.6 -	3.0	gal	3	-	5	kg CO2eq
Total			39 kg CO2eq				21	-	47	kg CO2eq

Regarding crop inputs per acre, it should be noted that camelina has a higher percentage of oil per pound of seed than soybeans. Soybeans are approximately 18% oil, therefore crushing one pound of soybeans yields

[25] See Sustainable Oils Memo dated November 5, 2010 for a map of the regions of the country where camelina is likely to be grown in wheat fallow conditions.

[26] Wright & Marois, 2011.

0.18 pounds of oil. In comparison, camelina is approximately 36% oil, therefore crushing one pound of camelina yields 0.36 pounds of oil. The difference in oil yield is taken into account when calculating the emissions per mmBTU included in Table 2. As shown in Table 2, GHG emissions from feedstock production for camelina and soybeans are relatively similar when factoring in variations in oil yields per acre and fertilizer, herbicide, pesticide, and petroleum use.

In summary, EPA concludes that the agricultural inputs for growing camelina are similar to those for growing soy beans, direct land use impact is expected to be negligible due to planting on land that would be otherwise fallow, and the limited production and use of camelina indicates no expected impacts on other crops and therefore no indirect land use impacts.

f. Crushing and Oil Extraction

We also looked at the seed crushing and oil extraction process and compared the lifecycle GHG emissions from this stage for soybean oil and camelina oil. As discussed above, camelina seeds produce more oil per pound than soybeans. As a result, the lifecycle GHG emissions associated with crushing and oil extraction are lower for camelina than soybeans, per pound of vegetable oil produced. Table 3 summarizes data on inputs, outputs and estimated lifecycle GHG emissions from crushing and oil extraction. The data on soybean crushing comes from the RFS2 final rule, based on a process model developed by USDA–ARS.[27] The data on camelina crushing is from Shonnard *et al.* (2010).

TABLE 3—COMPARISON OF CAMELINA AND SOYBEAN CRUSHING AND OIL EXTRACTION

Item	Soybeans	Camelina	Units
Material Inputs:			
Beans or Seeds	5.38	2.90	Lbs.
Energy Inputs:			
Electricity	374	47	Btu.
Natural Gas & Steam	1,912	780	Btu.
Outputs:			
Refined vegetable oil	1.00	1.00	Lbs.
Meal	4.08	1.85	Lbs.
GHG Emissions	213	64	gCO2e/lb refined oil.

2. Feedstock Distribution, Fuel Distribution, and Fuel Use

For this analysis, EPA projects that the feedstock distribution emissions will be the same for camelina and soybean oil. To the extent that camelina contains more oil per pound of seed, as discussed above, the energy needed to move the camelina would be lower than soybeans per gallon of fuel produced. To the extent that camelina is grown on more disperse fallow land than soybean and would need to be transported further, the energy needed to move the camelina could be higher than soybean. Based on this, we believe the assumption to use the same distribution impacts for camelina as soybean is a reasonable estimate of the GHG emissions from camelina feedstock distribution. In addition, the final fuel produced from camelina is also expected to be similar in composition to the comparable fuel produced from soybeans, therefore we are assuming GHG emissions from the distribution and use of fuels made from camelina will be the same as emissions of fuel produced from soybeans.

3. Fuel Production

There are two main fuel production processes used to convert camelina oil into fuel. The trans-esterification process produces biodiesel and a glycerin co-product. The hydrotreating process can be configured to produce renewable diesel either primarily as diesel fuel (including heating oil) or primarily as jet fuel. Possible additional products from hydrotreating include naphtha, LPG, and propane. Both processes and the fuels produced are described in the following sections. Both processes use camelina oil as a feedstock and camelina crushing is also included in the analysis.

a. Biodiesel

For this analysis, we assumed the same biodiesel production facility designs and conversion efficiencies as modeled for biodiesel produced from soybean oil and canola/rapeseed oil. Camelina oil biodiesel is produced using the same methods as soybean oil biodiesel, therefore plant designs are assumed to not significantly differ between fuels made from these feedstocks. As was the case for soybean oil biodiesel, we have not projected in our assessment of camelina oil biodiesel any significant improvements in plant technology. Unanticipated energy saving improvements would further improve GHG performance of the fuel pathway.

The glycerin produced from camelina biodiesel production is equivalent to the glycerin produced from the existing biodiesel pathways (*e.g.,* based on soy oil) that were analyzed as part of the RFS2 final rule. Therefore the same co-product credit would apply to glycerin from camelina biodiesel as glycerin produced in the biodiesel pathways modeled for the RFS2 final rule. The assumption is that the GHG reductions associated with the replacement of residual oil with glycerin on an energy equivalent basis represents an appropriate midrange co-product credit of biodiesel produced glycerin.

As part of our RFS2 proposal, we assumed the glycerin would have no value and would effectively receive no co-product credits in the soy biodiesel pathway. We received numerous comments, however, stating that the glycerin would have a beneficial use and should generate co-product benefits. Therefore, the biodiesel glycerin co-product determination made as part of the RFS2 final rule took into consideration the possible range of co-product credit results. The actual co-product benefit will be based on what products are replaced by the glycerin and what new uses develop for the co-product glycerin. The total amount of glycerin produced from the biodiesel industry will actually be used across a number of different markets with different GHG impacts. This could include for example, replacing

[27] A. Pradhan, D.S. Shrestha, A. McAloon, W. Yee, M. Haas, J.A. Duffield, H. Shapouri, September 2009, ''Energy Life-Cycle Assessment of Soybean Biodiesel'', United States Department of Agriculture, Office of the Chief Economist, Office of Energy Policy and New Uses, Agricultural Economic Report Number 845.

petroleum glycerin, replacing fuel products (residual oil, diesel fuel, natural gas, *etc.*), or being used in new products that don't have a direct replacement, but may nevertheless have indirect effects on the extent to which existing competing products are used. The more immediate GHG reduction credits from glycerin co-product use will likely range from fairly high reduction credits when petroleum glycerin is replaced to lower reduction credits if it is used in new markets that have no direct replacement product, and therefore no replaced emissions.

EPA does not have sufficient information (and received no relevant comments as part of the RFS2 rule) on which to allocate glycerin use across the range of likely uses. Therefore, EPA believes that the approach used in RFS2 of picking a surrogate use for modeling purposes in the mid-range of likely glycerin uses, and the GHG emissions results tied to such use, is reasonable. The replacement of an energy equivalent amount of residual oil is a simplifying assumption determined by EPA to reflect the mid-range of possible glycerin uses in terms of GHG credits. EPA believes that it is appropriately representative of GHG reduction credit across the possible range without necessarily biasing the results toward high or low GHG impact. Given the fundamental difficulty of predicting possible glycerin uses and impacts of those uses many years into the future under evolving market conditions, EPA believes it is reasonable to use the more simplified approach to calculating co-product GHG benefit associated with glycerin production.

Given the fact that GHG emissions from camelina-based biodiesel would be similar to the GHG emissions from soybean- based biodiesel at all stages of the lifecycle but would not result in land use change as was the case for soy oil used as a feedstock, we believe biodiesel from camelina oil will also meet the 50% GHG emissions reduction threshold to qualify as a biomass based diesel and an advanced fuel. Therefore, EPA is including biodiesel produced from camelina oil under the same pathways for which biodiesel made from soybean oil qualifies under the RFS2 final rule.

b. Renewable Diesel (Including Jet Fuel and Heating Oil), Naphtha, and LPG

The same feedstocks currently used for biodiesel production can also be used in a hydrotreating process to produce a slate of products, including diesel fuel, heating oil (defined as No. 1 or No. 2 diesel), jet fuel, naphtha, LPG, and propane. Since the term renewable diesel is defined to include the products diesel fuel, jet fuel and heating oil, the following discussion uses the term renewable diesel to also include diesel fuel, jet fuel and heating oil. The yield of renewable diesel is relatively insensitive to feedstock source.[28] While any propane produced as part of the hydrotreating process will most likely be combusted within the facility for process energy, the other co-products that can be produced (*i.e.,* renewable diesel, naphtha, LPG) are higher value products that could be used as transportation fuels or, in the case of naphtha, a blendstock for production of transportation fuel. The hydrotreating process maximized for producing a diesel fuel replacement as the primary fuel product requires more overall material and energy inputs than transesterification to produce biodiesel, but it also results in a greater amount of other valuable co-products as listed above. The hydrotreating process can also be maximized for jet fuel production which requires even more process energy than the process optimized for producing a diesel fuel replacement, and produces a greater amount of co-products per barrel of feedstock, especially naphtha.

Producers of renewable diesel from camelina have expressed interest in generating RINs under the RFS2 program for the slate of products resulting from the hydrotreating process. Our lifecycle analysis accounts for the various uses of the co-products. There are two main approaches to accounting for the co-products produced, the allocation approach, and the displacement approach. In the allocation approach all the emissions from the hydrotreating process are allocated across all the different co-products. There are a number of ways to do this but since the main use of the co-products would be to generate RINs as a fuel product we allocate based on the energy content of the co-products produced. In this case, emissions from the process would be allocated equally to all the Btus produced. Therefore, on a per Btu basis all co-products would have the same emissions. The displacement approach would attribute all of the emissions of the hydrotreating process to one main product and then account for the emission reductions from the other co-products displacing alternative product production. For example, if the hydrotreating process is configured to maximize diesel fuel replacement production, all of the emissions from the process would be attributed to diesel fuel, but we would then assume the other co-products were displacing alternative products, for example, naphtha would displace gasoline, LPG would displace natural gas, *etc.* This assumes the other alternative products are not produced or used, so we would subtract the emissions of gasoline production and use, natural gas production and use, *etc.* This would show up as a GHG emission credit associated with the production of diesel fuel replacement.

To account for the case where RINs are generated for the jet fuel, naphtha and LPG in addition to the diesel replacement fuel produced, we would not give the diesel replacement fuel a displacement credit for these co-products. Instead, the lifecycle GHG emissions from the fuel production processes would be allocated to each of the RIN-generating products on an energy content basis. This has the effect of tending to increase the fuel production lifecycle GHG emissions associated with the diesel replacement fuel because there are less co-product displacement credits to assign than would be the case if RINs were not generated for the co-products.[29] On the other hand, the upstream lifecycle GHG emissions associated with producing and transporting the plant oil feedstocks will be distributed over a larger group of RIN-generating products. Assuming each product (except propane) produced via the camelina oil hydrotreating process will generate RINs results in higher lifecycle GHG emissions for diesel fuel replacement as compared to the case where the co-products are not used to generate RINs. This general principle is also true when the hydrotreating process is maximized for jet fuel production. As a result, the worst GHG performance (*i.e.,* greatest lifecycle GHG emissions) for diesel replacement fuel and jet fuel produced from camelina oil via hydrotreating will occur when all of the co-products are RIN-generating (we assume propane will be used for process energy). Thus, if these fuels meet the 50% GHG reduction threshold for biomass based diesel or advanced biofuel when co-products are RIN-generating, they will

[28] Kalnes, T., N., McCall, M., M., Shonnard, D., R., 2010. Renewable Diesel and Jet-Fuel Production from Fats and Oils. Thermochemical Conversion of Biomass to Liquid Fuels and Chemicals, Chapter 18, p. 475.

[29] For a similar discussion see page 46 of Stratton, R.W., Wong, H.M., Hileman, J.I. 2010. Lifecycle Greenhouse Gas Emissions from Alternative Jet Fuels. PARTNER Project 28 report. Version 1.1. PARTNER–COE–2010–001. June 2010, *http://web.mit.edu/aeroastro/partner/reports/proj28/partner-proj28–2010–001.pdf.*

also do so in the case when RINs are not generated for co-products.

We have evaluated information about the lifecycle GHG emissions associated with the hydrotreating process which can be maximized for jet fuel or diesel replacement fuel production. Our evaluation considers information published in peer-reviewed journal articles and publicly available literature (Kalnes *et al,* 2010, Pearlson, M., N., 2011,[30] Stratton *et al.,* 2010, Huo *et al.,* 2008).[31] Our analysis of GHG emissions from the hydrotreating process is based on the mass and energy balance data in Pearlson (2011) which analyzes a hydrotreating process maximized for diesel replacement fuel production and a hydrotreating process maximized for jet fuel production.[32] This data is summarized in Table 4.

TABLE 4—HYDROTREATING PROCESSES TO CONVERT CAMELINA OIL INTO DIESEL REPLACEMENT FUEL AND JET FUEL[33]

	Maximized for diesel fuel production	Maximized for jet fuel production	Units (per gallon of fuel produced)
Inputs:			
Refined camelina oil	9.56	12.84	Lbs.
Hydrogen	0.04	0.08	Lbs.
Electricity	652	865	Btu.
Natural Gas	23,247	38,519	Btu.
Outputs:			
Diesel Fuel	123,136	55,845	Btu.
Jet fuel	23,197	118,669	Btu.
Naphtha	3,306	17,042	Btu.
LPG	3,084	15,528	Btu.
Propane	7,454	9,881	Btu.

Table 5 compares lifecycle GHG emissions from oil extraction and fuel production for soybean oil biodiesel and for camelina-based diesel and jet fuel. The lifecycle GHG estimates for camelina oil diesel and jet fuel are based on the input/output data summarized in Table 3 (for oil extraction) and Table 4 (for fuel production). We assume that the propane co-product does not generate RINs; instead, it is used for process energy displacing natural gas. We also assume that the naphtha is used as blendstock for production of transportation fuel to generate RINs. In this case we assume that RINs are generated for the use of LPG in a way that meets the EISA definition of transportation fuel, for example it could be used in a nonroad vehicle. The lifecycle GHG results in Table 5 represent the worst case scenario (*i.e.,* highest GHG emissions) because all of the eligible co-products are used to generate RINs. This is because, as discussed above, lifecycle GHG emissions per Btu of diesel or jet fuel would be lower if the naphtha or LPG is not used to generate RINs and is instead used for process energy displacing fossil fuel such as natural gas. Supporting information for the values in Table 5, including key assumptions and data, is provided through the docket.

TABLE 5—FUEL PRODUCTION LIFECYCLE GHG EMISSIONS (KGCO2e/MMBTU)[34]

Feedstock	Production process	RIN–Generating products	Other co-products	Oil extraction	Processing	Total
Soybean Oil	Trans-Esterification	Biodiesel	Glycerin	14	(1)	13
Camelina Oil	Trans-Esterification	Biodiesel	Glycerin	4	(1)	3
Camelina Oil	Hydrotreating Maximized for Diesel.	Diesel Jet Fuel. Naphtha. LPG.	Propane	4	8	12
Camelina Oil	Hydrotreating Maximized for Jet Fuel.	Jet Fuel Diesel. Naphtha. LPG.	Propane	4	11	14

As discussed above, for a process that produces more than one RIN-generating output (*e.g.,* the hydrotreating process summarized in Table 5 which produces diesel replacement fuel, jet fuel, and naphtha) we allocate lifecycle GHG emissions to the RIN generating products on an energy equivalent basis. We then normalize the allocated lifecycle GHG emissions per mmBtu of each fuel product. Therefore, each RIN-generating product from the same process will be assigned equal lifecycle GHG emissions per mmBtu from fuel processing. For example, based on the

[30] Pearlson, M., N. 2011. A Techno-Economic and Environmental Assessment of Hydroprocessed Renewable Distillate Fuels.

[31] Huo, H., Wang., M., Bloyd, C., Putsche, V., 2008. Life-Cycle Assessment of Energy and Greenhouse Gas Effects of Soybean-Derived Biodiesel and Renewable Fuels. Argonne National Laboratory. Energy Systems Division. ANL/ESD/08–2. March 12, 2008.

[32] We have also considered data submitted by companies involved in the hydrotreating industry which is claimed as confidential business information (CBI). The conclusions using the CBI data are consistent with the analysis presented here.

[33] Based on Pearlson (2011), Table 3.1 and Table 3.2.

[34] Lifecycle GHG emissions are normalized per mmBtu of RIN-generating fuel produced. Totals may not be the sum of the rows due to rounding error. Parentheses indicate negative numbers. Process emissions for biodiesel production are negative because they include the glycerin offset credit.

lifecycle GHG estimates in Table 5 for the hydrotreating process maximized to produce jet fuel, the jet fuel and the naphtha both have lifecycle GHG emissions of 14 $kgCO_2e$/mmBtu. For the same reasons, the lifecycle GHG emissions from the jet fuel and naphtha will stay equivalent if we consider upstream GHG emissions, such as emissions associated with camelina cultivation and harvesting. Lifecycle GHG emissions from fuel distribution and use could be somewhat different for the jet fuel and naphtha, but since these stages produce a relatively small share of the emissions related to the full fuel lifecycle, the overall difference will be quite small.

Given that GHG emissions from camelina oil would be similar to the GHG emissions from soybean oil at all stages of the lifecycle but would not result in land use change emissions (soy oil feedstock did have a significant land use change impact but still met a 50% GHG reduction threshold), and considering differences in process emissions between soybean biodiesel and camelina-based renewable diesel, we conclude that renewable diesel from camelina oil will also meet the 50% GHG emissions reduction threshold to qualify as biomass based diesel and advanced fuel. Although some of the potential configurations result in fuel production GHG emissions that are higher than fuel production GHG emissions for soybean oil biodiesel, land use change emissions account for approximately 80% of the soybean oil to biodiesel lifecycle GHGs. Since camelina is assumed not to have land use change emissions, our analysis shows that camelina renewable diesel will qualify for advanced renewable fuel and biomass-based diesel RINs even for the cases with the highest lifecycle GHGs (*e.g.,* when all of the co-products are used to generate RINs.) Because the lifecycle GHG emissions for RIN-generating co-products are very similar, we can also conclude naphtha and LPG produced from camelina oil will also meet the 50% GHG emissions reduction threshold. If the facility does not actually generate RINs for one or more of these co-products, we estimate that the lifecycle GHG emissions related to the RIN-generating products would be lower, thus renewable diesel (which includes diesel fuel, jet fuel, and heating oil) from camelina would still meet the 50% emission reduction threshold.

4. Summary

Current information suggests that camelina has limited niche markets and will be produced on land that would otherwise remain fallow. Therefore, increased production of camelina-based renewable fuel is not expected to result in significant land use change emissions. For the purposes of this analysis, EPA is projecting there will be no land use emissions associated with camelina production for use as a renewable fuel feedstock.

However, while production of camelina on acres that would otherwise remain fallow is expected to be the primary means by which the majority of all camelina is commercially harvested in the short- to medium- term, in the long term camelina may expand to other growing methods and lands if demand increases substantially beyond what EPA is currently predicting. While the impacts are uncertain, there are some indications demand could increase significantly. For example, camelina is included under USDA's Biomass Crop Assistance Program (BCAP) and there is growing support for the use of camelina oil in producing drop-in alternative aviation fuels. EPA plans to monitor the expansion of camelina production to verify whether camelina is primarily grown on existing acres once camelina is produced at larger-scale volumes. Similarly, we will consider market impacts if alternative uses for camelina expand significantly beyond what was described in the above analysis. Just as EPA plans to periodically review and revise the methodology and assumptions associated with calculating the GHG emissions from all renewable fuel feedstocks, EPA expects to review and revise as necessary the analysis of camelina in the future.

Taking into account the assumption of no land use change emissions when camelina is used to produce renewable fuel, and considering that other sources of GHG emissions related to camelina biodiesel or renewable diesel production have comparable GHG emissions to biodiesel from soybean oil, we have determined that camelina-based biodiesel and renewable diesel should be treated in the same manner as soy-based biodiesel and renewable diesel in qualifying as biomass-based diesel and advanced biofuel for purposes of RIN generation, since the GHG emission performance of the camelina-based fuels will be at least as good and in some respects better than that modeled for fuels made from soybean oil. EPA found as part of the Renewable Fuel Standard final rulemaking that soybean biodiesel resulted in a 57% reduction in GHG emissions compared to the baseline petroleum diesel fuel. Furthermore, approximately 80% of the lifecycle impacts from soybean biodiesel were from land use change emissions which are assumed to be not significant for the camelina pathway considered. Thus, EPA is including camelina oil as a potential feedstock under the same biodiesel and renewable diesel (which includes diesel fuel, jet fuel, and heating oil) pathways for which soybean oil currently qualifies. We are also including a pathway for naphtha and LPG produced from camelina oil through hydrotreating. This is based on the fact that our analysis shows that even when all of the co-products are used to generate RINs the lifecycle GHG emissions for RIN-generating co-products including diesel replacement fuel, jet fuel, naphtha and LPG produced from camelina oil will all meet the 50% GHG emissions reduction threshold.

We are also clarifying that two existing pathways for RIN generation in the RFS regulations that list ''renewable diesel'' as a fuel product produced through a hydrotreating process include jet fuel. This applies to two pathways in Table 1 to § 80.1426 of the RFS regulations which both list renewable diesel made from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, or non-food grade corn oil using hydrotreating as a process. If parties produce jet fuel from the hydrotreating process and co-process renewable biomass and petroleum they can generate advanced biofuel RINs (D code 5) for the jet fuel produced. If they do not co-process renewable biomass and petroleum they can generate biomass-based diesel RINs (D code 4) for the jet fuel produced.

§ 80.1401 of the RFS regulations currently defines non-ester renewable diesel as a fuel that is not a mono-alkyl ester and which can be used in an engine designed to operate on conventional diesel fuel or be heating oil or jet fuel. The reference to jet fuel in this definition was added by direct final rule dated May 10, 2010. Table 1 to § 80.1426 identifies approved fuel pathways by fuel type, feedstock source and fuel production processes. The table, which was largely adopted as part of the March 26, 2010 RFS2 final rule, identifies jet fuel and renewable diesel as separate fuel types. Accordingly, in light of the revised definition of renewable diesel enacted after the RFS2 rule, there is ambiguity regarding the extent to which references in Table 1 to ''renewable diesel'' include jet fuel.

The original lifecycle analysis for the renewable diesel from hydrotreating pathways listed in Table 1 to § 80.1426 was not based on producing jet fuel but rather other transportation diesel fuel products, namely a diesel fuel replacement. As discussed above, the

hydrotreating process can produce a mix of products including jet fuel, diesel, naphtha, LPG and propane. Also, as discussed, there are differences in the process configured for maximum jet fuel production vs. the process maximized for diesel fuel production and the lifecycle results vary depending on what approach is used to consider co-products (*i.e.,* the allocation or displacement approach).

In cases where there are no pathways for generating RINs for the co-products from the hydrotreating process it would be appropriate to use the displacement method for capturing the credits of co-products produced. This is the case for most of the original feedstocks included in Table 1 to § 80.1426.[35] As was discussed previously, if the displacement approach is used when jet fuel is the primary product produced it results in lower emissions then the production maximized for diesel fuel production. Therefore, since the hydrotreating process maximized for diesel fuel meets the 50% lifecycle GHG threshold for the feedstocks in question, the process maximized for jet fuel would also qualify.

Thus, we are interpreting the references to ''renewable diesel'' in Table 1 to include jet fuel, consistent with our regulatory definition of ''non-ester renewable diesel,'' since doing so clarifies the existing regulations while ensuring that Table 1 to § 80.1426 appropriately identifies fuel pathways that meet the GHG reduction thresholds associated with each pathway.

We note that although the definition of renewable diesel includes jet fuel and heating oil, we have also listed in Table 1 of section 80.1426 of the RFS2 regulations jet fuel and heating oil as specific co-products in addition to listing renewable diesel to assure clarity. This clarification also pertains to all the feedstocks already included in Table 1 for renewable diesel.

B. Lifecycle Greenhouse Gas Emissions Analysis for Ethanol, Diesel, Jet Fuel, Heating Oil, and Naphtha Produced From Energy Cane, Giant Reed, and Napiergrass

For this rulemaking, EPA considered the lifecycle GHG impacts of three new types of high-yielding perennial grasses similar in cellulosic composition to switchgrass and comparable in status as an emerging energy crop. Energy cane (related to sugarcane), giant reed (*Arundo donax*), and napiergrass (*pennisetum purpureum*), also known as elephant grass. In the proposed and final RFS2 rule, EPA analyzed the lifecycle GHG impacts of producing and using cellulosic ethanol and cellulosic Fischer-Tropsch diesel from switchgrass. The midpoint of the range of switchgrass results showed a 110% GHG reduction (range of 102%–117%) for cellulosic ethanol (biochemical process), a 72% (range of −64% to −79%) reduction for cellulosic ethanol (thermochemical process), and a 71% (range of −62% to −77%) reduction for cellulosic diesel (F–T process) compared to the petroleum baseline. In the RFS2 final rule, we indicated that some feedstock sources can be determined to be similar enough to those modeled that the modeled results could reasonably be extended to these similar feedstock types. For instance, information on miscanthus indicated that this perennial grass will yield more feedstock per acre than the modeled switchgrass feedstock without additional inputs with GHG implications (such as fertilizer). Therefore in the final rule EPA concluded that since biofuel made from the cellulosic biomass in switchgrass was found to satisfy the 60% GHG reduction threshold for cellulosic biofuel, biofuel produced form the cellulosic biomass in miscanthus would also comply. In the final rule we included cellulosic biomass from switchgrass and miscanthus as eligible feedstocks for the cellulosic biofuel pathways included in Table 1 to § 80.1426.

We did not include other perennial grasses such as energy cane, giant reed, or napiergrass as feedstocks for the cellulosic biofuel pathways in Table 1 at that time, since we did not have sufficient time to adequately consider them. Based in part on additional information received through the petition process for EPA approval of energy cane, giant reed, and napiergrass pathways, EPA has evaluated these feedstocks and is now including the cellulose, hemicelluloses and lignin portions of renewable biomass from energy cane, giant reed, and napiergrass in Table 1 to § 80.1426 as approved feedstocks for cellulosic biofuel pathways.

As described in detail in the following sections of this preamble, because of the similarity of these feedstocks to switchgrass and miscanthus, EPA believes that new agricultural sector modeling is not needed to analyze them. We have instead relied upon the switchgrass analysis to assess the relative GHG impacts of biofuel produced from energy cane, giant reed, and napiergrass. As with the switchgrass analysis, we have attributed all land use impacts and resource inputs from use of these feedstocks to the portion of the fuel produced that is derived from the cellulosic components of the feedstocks. Based on this analysis and currently available information, we conclude that biofuel (ethanol, cellulosic diesel, jet fuel, heating oil and naptha) produced from the cellulosic biomass of energy cane, giant reed, or napiergrass has similar lifecycle GHG impacts to switchgrass biofuel and meets the 60% GHG reduction threshold required for cellulosic biofuel.

1. Feedstock Production and Distribution

For the purposes of this rulemaking, energy cane refers to varieties of perennial grasses in the *Saccharum* genus which are intentionally bred for high cellulosic biomass productivity but have characteristically low sugar content making them unsuitable as a primary source of sugar as compared to other varieties of grasses commonly known as ''sugarcane'' in the *Saccharum* genus. Energy cane varieties developed to date have low tolerance for cold temperatures but grow well in warm, humid climates. Energy cane originated from efforts to improve disease resistance and hardiness of commercial sugarcane by crossbreeding commercial and wild sugarcane strains. Certain higher fiber, lower sugar varieties that resulted were not suitable for commercial sugar production, and are now being developed as a high-biomass energy crop. There is currently no commercial production of energy cane. Current plantings are mainly limited to research field trials and small demonstrations for bioenergy purposes. However, based in part on discussions with industry, EPA anticipates continued development of energy cane particularly in the south-central and southeastern United States due to its high yields in these regions.

Giant reed refers to the perennial grass *Arundo donax* of the *Gramineae* family. Giant reed thrives in subtropical and warm-temperate areas and is grown throughout Asia, southern Europe, Africa, the Middle East, and warmer U.S. states for multiple uses such as paper and pulp, musical instruments, rayon, particle boards, erosion control, and ornamental purposes.[36] [37] Based in

[35] The exception is naphtha produced from waste categories, but these would pass the lifecycle thresholds regardless of the allocation approach used given their low feedstock GHG impacts.

[36] See *http://www.fs.fed.us/database/feis/plants/graminoid/arudon/all.html.*

[37] See Lewandowski, I., Scurlock, J.M.O., Lindvall, E., Christou, M. (2003). The development and current status of perennial rhizomatous grasses

Continued

part on discussions with industry, EPA anticipates continued development of giant reed as an energy crop particularly in the Mediterranean region and warmer U.S. states.

Napiergrass is a tall bunch-type grass that has traditionally been grown as a high-yielding forage crop across the wet tropics. There is a considerable body of agronomic research on the production of napiergrass as a forage crop. More recently, researchers have investigated ways to maximize traits desirable in bioenergy crops. Practices have been developed by USDA and other researchers to lower fertilization rates and increase biomass production. Based in part on discussions with industry, EPA anticipates continued development of napiergrass as an energy crop particularly in Gulf Coast Region of the United States (more specifically the growing region includes Florida and southern portions of Texas, Louisiana, Georgia, Alabama and Mississippi).[38]

a. Crop Yields

For the purposes of analyzing the GHG emissions from energy cane, giant reed, and napiergrass production, EPA examined crop yields and production inputs in relation to switchgrass to assess the relative GHG impacts. Current national yields for switchgrass are approximately 4.5 to 5 dry tons per acre. Average energy cane yields exceed switchgrass yields in both unfertilized and fertilized trails conducted in the southern United States. Unfertilized yields are around 7.3 dry tons per acre while fertilized trials show energy cane yields range from approximately 11 to 20 dry tons per acre.[39] [40] Until recently there have been few efforts to improve energy cane yields, but several energy cane development programs are now underway to further increase its biomass productivity. Giant reed field trials conducted in Alabama over a 9-year period showed an average yield of 15 dry tons per acre with no nitrogen fertilizer applied after the first year.[41] Fertilized field trials have shown yields around 13 to 28 dry tons per acre in Spain, and 12 dry tons per acre in Italy (based on annual yields of 3, 14, 17, 16, and 12).[42] High yields have been demonstrated with unimproved giant reed populations, and therefore there is potential for increased biomass productivity through improved growing methods and breeding efforts.[43] Napiergrass field trials have produced dry biomass yields exceeding 20 tons per acre per year in north-central Florida. Using currently available technology, average yields for full-season napiergrass should range from 14 to 18 tons per acre with future improvements expected. Yield depends greatly on the type of cultivar and the amount and distribution of rainfall and fertilization rates. There is potential for increased biomass productivity through improved growing methods and breeding efforts.[44] In general, the yields for all three of the energy grasses considered here will have higher yields than switchgrass, so from a crop yield perspective, the switchgrass analysis would be a conservative estimate when comparing against the energy cane, napier grass, and giant reed pathways.

Furthermore, EPA's analysis of switchgrass for the RFS2 rulemaking assumed a 2% annual increase in yield that would result in an average national yield of 6.6 dry tons per acre in 2022. EPA anticipates a similar yield improvement for energy cane, giant reed, and napiergrass due to their similarity as perennial grasses and their comparable status as energy crops in their early stages of development. Given this, our analysis assumes an average energy cane yield of 19 dry tons per acre in the southern United States by 2022; an average giant reed yield of approximately 18 dry tons per acre by 2022; and an average napiergrass yield of approximately 20 dry tons per acre by 2022.[45] The ethanol yield for all of the grasses is approximately the same so the higher crop yields for energy cane, napiergrass, and giant reed result directly in greater ethanol production compared to switchgrass per acre of production.

Based on these yield assumptions, in areas with suitable growing conditions, energy cane would require approximately 26% to 47% of the land area required by switchgrass to produce the same amount of biomass, giant reed would require less than 40% of the land area required by switchgrass to produce the same amount of biomass, and napiergrass would require approximately 33% of the land area required by switchgrass to produce the same amount of biomass due to their higher yields. Even without yield growth assumptions, their currently higher crop yield rates means the land use required for these crops would be lower than for switchgrass. Therefore less crop area would be converted and displaced resulting in smaller land-use change GHG impacts than that assumed for switchgrass to produce the same amount of fuel. Furthermore, we believe energy cane and napiergrass will have a similar impact on international markets as assumed for switchgrass. Like switchgrass, energy cane and napiergrass are not expected to be traded internationally and their impacts on other crops are expected to be limited. Increased giant reed demand in the U.S. for biofuels is not expected to impact existing markets for giant reed, which are relatively small niche markets (*e.g.,* musical instrument reeds).

b. Land Use

In EPA's RFS2 analysis, switchgrass plantings displaced primarily soybeans and wheat, and to a lesser extent hay, rice, sorghum, and cotton. Energy cane and napiergrass, with production focused in the southern United States, are likely to be grown on land once used for pasture, rice, commercial sod, cotton or alfalfa, which would likely have less of an international indirect impact than switchgrass because some of those commodities are not as widely traded as soybeans or wheat. Given that energy cane and napiergrass will likely displace the least productive land first, EPA concludes that the land use GHG impact for energy cane and napiergrass per gallon should be no greater and likely less than estimated for switchgrass. Given that giant reed is in early stages of development as an energy crop, there is limited information on where it will be grown and what crops it will displace. We expect giant reed will displace the least productive land first and would likely have a similar or smaller indirect impact associated with crop displacement than what we assumed for switchgrass.

Considering the total land potentially impacted by all the new feedstocks included in this rulemaking would not

as energy crops in the US and Europe. Biomass and Bioenergy 25, 335–361.

[38] For a map depicting the northern limit for sustained napiergrass production in the United States see Figure 1 in Woodard, K., R. and Sollenberger, L, E. 2008. Production of Biofuel Crops in Florida: Elephantgrass. Institute of Food and Agricultural Sciences, University of Florida. SS AGR 297.

[39] See Bischoff, K.P., Gravois, K.A., Reagan, T.E., Hoy, J.W., Kimbeng, C.A., LaBorde, C.M., Hawkins, G.L. *Plant Regis.* 2008, 2, 211–217.

[40] See Hale, A.L. *Sugar Bulletin,* 2010, 88, 28–29.

[41] Huang, P., Bransby, D., and Sladden, S. (2010). Exceptionally high yields and soil carbon sequestration recorded for giant reed in Alabama. Poster session presented at: ASA, CSSA, and SSSA 2010 International Annual Meetings, Green Revolution 2.0; 2010 Oct 31–Nov 4; Long Beach, CA.

[42] Mantineo, M., D'Agnosta, G.M., Copani, V., Patanè, C., and Cosentino, S.L. (2009). Biomass yield and energy balance of three perennial crops for energy use in the semi-arid Mediterranean environment. Field Crops Research 114, 204–213.

[43] Lewandowski *et al.* 2003.

[44] Based on discussions with industry and USDA and Woodard and Sollenberger (2008).

[45] These yields assume no significant adverse climate impacts on world agricultural yields over the analytical timeframe.

impact these conclusions (including the camelina discussed in the previous section and the three energy grasses considered here). As discussed previously, the camelina is expected to be grown on fallow land in the Northwest, while energy grasses are expected to be grown mainly in the south on existing cropland or pastureland. In the switchgrass ethanol scenario done for the Renewable Fuel Standard final rulemaking, total cropland acres increases by 4.2 million acres, including an increase of 12.5 million acres of switchgrass, a decrease of 4.3 million acres of soybeans, a 1.4 million acre decrease of wheat acres, a decrease of 1 million acres of hay, as well as decreases in a variety of other crops. Given the higher yields of the energy grasses considered here compared to switchgrass, there would be ample land available for production without having any adverse impacts beyond what was considered for switchgrass production.

c. Crop Inputs and Feedstock Transport

EPA also assessed the GHG impacts associated with planting, harvesting, and transporting energy cane, giant reed, and napiergrass feedstocks in comparison to switchgrass. Table 6 shows the assumed 2022 commercial-scale production inputs for switchgrass (used in the RFS2 rulemaking analysis), average energy cane, giant reed, and napiergrass production inputs (USDA projections and industry data) and the associated GHG emissions.

Available data gathered by EPA suggest that energy cane requires on average less nitrogen, phosphorous, potassium, and pesticide than switchgrass per dry ton of biomass, but more herbicide, lime, diesel, and electricity per unit of biomass. Giant reed may require on average less nitrogen and insecticide than switchgrass, but more phosphorous, potassium, herbicide, diesel, and electricity per unit of biomass. Napiergrass may require similar amounts of nitrogen fertilizer application as switchgrass, less phosphorous, potassium and insecticide than switchgrass, but more herbicide, lime, diesel, and electricity per unit of biomass.

This assessment assumes production of all three new feedstocks uses electricity for irrigation given that growers will likely irrigate when possible to improve yields. Irrigation rates will vary depending on the timing and amount of rainfall, but for the purpose of estimating GHG impacts of electricity use for irrigation, we assumed a rate similar to what we assumed for other irrigated crops in the Southwest, South Central, and Southeast as shown in Table 6.

Applying the GHG emission factors used in the RFS2 final rule, energy cane production results in slightly higher GHG emissions relative to switchgrass production (an increase of approximately 4 kg CO_2eq/mmbtu). Giant reed production results in slightly lower GHG emissions relative to switchgrass production (a decrease of approximately 2 kg CO_2eq/mmbtu). Napiergrass production results in slightly higher GHG emissions relative to switchgrass production (an increase of approximately 6 kg CO_2eq/mmbtu).

TABLE 6—PRODUCTION INPUTS AND GHG EMISSIONS FOR SWITCHGRASS, ENERGY CANE, GIANT REED, AND NAPIERGRASS (BIOCHEMICAL ETHANOL), 2022

	Emission factors	Switchgrass		Energy Cane		Giant Reed		Napiergrass	
		Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)	Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)	Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)	Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)
Nitrogen Fertilizer	3,29 kgCO_2e/ton of nitrogen.	15.2 lbs	3.6 kgCO_2e	8.4 lbs	2 kgCO_2e	5 lbs	1 kgCO_2e	10 lbs	2.4 kgCO_2e.
N_2O	N/A	N/A	7.6 kgCO_2e	N/A	5.9 kgCO_2e	N/A	4.8 kgCO_2e	N/A	7.6 kgCO_2e.
Phosphorus Fertilizer.	1,12 kgCO_2e/ton of phosphate.	6.1 lbs	0.5 kgCO_2e	3.2 lbs	0.3 kgCO_2e	7.4 lbs	0.6 kgCO_2e	1.1 lbs	0.1 kgCO_2e.
Potassium Fertilizer.	743 kgCO_2e/ton of potassium.	6.1 lbs	0.3 kgCO_2e	4.2 lbs	0.2 kgCO_2e	7.4 lbs	0.4 kgCO_2e	4.0 lbs	0.2 kgCO_2e.
Herbicide	23,45 kgCO_2e/ tons of herbicide.	0.002 lbs	0.003 kgCO_2e	1.0 lbs	1.8 kgCO_2e	0.02 lbs	0.03 kgCO_2e	0.4 lbs	0.6 kgCO_2e.
Insecticide (average across regions).	27,22 kgCO_2e/ tons of pesticide.	0.025 lbs	0.04 kgCO_2e	0 lbs	0 kgCO_2e	0 lbs	0 kgCO_2e	0 lbs	0 kgCO_2e.
Lime	408 kgCO_2e/ton of lime.	0 lbs	0 kgCO_2e	104.7 lbs	3.1 kgCO_2e	0 lbs	0 kgCO_2e	100 lbs	2.9 kgCO_2e.
Diesel	97 kgCO_2e/ mmBtu diesel.	0.4 gal	0.8 kgCO_2e	1.3 gal	2.4 kgCO_2e	1.4 gal	2.5 kgCO_2e	1.3 gal	2.2 kgCO_2e.
Electricity (irrigation).	220 kgCO_2e/ mmBtu.	0 kWh	0 kgCO_2e	14.7 kWh	1.6 kgCO_2e	10 kWh	1 kgCO_2e	25 kWh	2.7 kgCO_2e.
Total Emissions.			13 kgCO_2e/ mmBtu.		17 kgCO_2e/ mmBtu.		11 kgCO_2e/ mmBtu.		19 kgCO_2e/ mmBtu.

Assumes 2022 switchgrass yield of 6.59 dry tons/acre and 92.3 gal ethanol/dry ton, 2022 energy cane yield of 19.1 dry tons/acre and 92 gal ethanol/dry ton, 2022 giant reed yield of 18 dry tons/acre and 92.3 gal ethanol/dry ton, and 2022 napiergrass yield of 20 dry tons/acre and 92.3 gal ethanol/dry ton. More detail on calculations and assumptions is included in materials to the docket.

GHG emissions associated with distributing energy cane, giant reed, and napiergrass feedstocks are expected to be similar to EPA's estimates for switchgrass feedstock because they are all herbaceous agricultural crops requiring similar transport, loading, unloading, and storage regimes. Our analysis therefore assumes the same GHG impact for feedstock distribution as we assumed for switchgrass, although distributing energy cane, giant reed, and napiergrass feedstocks could be less GHG intensive because higher yields could translate to shorter overall hauling distances to storage or biofuel production facilities per gallon or Btu of final fuel produced.

2. Fuel Production, Distribution, and Use

Energy cane, giant reed, and napiergrass are suitable for the same conversion processes as other cellulosic

feedstocks, such as switchgrass and corn stover. Currently available information on energy cane, giant reed, and napiergrass composition shows that their hemicellulose, cellulose, and lignin content are comparable to other crops that qualify under the RFS regulations as feedstocks for the production of cellulosic biofuels. Based on this similar composition as well as conversion yield data provided by industry, we applied the same production processes that were modeled for switchgrass in the final RFS2 rule (biochemical ethanol, thermochemical ethanol, and Fischer-Tropsch (F–T) diesel [46]) to energy cane, giant reed, and napiergrass. We assumed the GHG emissions associated with producing biofuels from energy cane, giant reed, and napiergrass are similar to what we estimated for switchgrass and other cellulosic feedstocks. EPA also assumes that the distribution and use of biofuel made from energy cane, giant reed, and napiergrass will not differ significantly from similar biofuel produced from other cellulosic sources. As was done for the switchgrass case, this analysis assumes energy grasses grown in the United States for production purposes. If crops were grown internationally, used for biofuel production, and the fuel was shipped to the U.S., shipping the finished fuel to the U.S. could increase transport emissions. However, considering the increased transport emissions associated with sugarcane ethanol distribution to the U.S., this would at most add 1–2% to the overall lifecycle GHG impacts of the energy grasses.

3. Summary

Based on our comparison of switchgrass and the three feedstocks considered here, EPA believes that cellulosic biofuel produced from the cellulose, hemicellulose and lignin portions of energy cane, giant reed, and napiergrass has similar or better lifecycle GHG impacts than biofuel produced from the cellulosic biomass from switchgrass. Our analysis suggests that the three feedstocks considered have GHG impacts associated with growing and harvesting the feedstock that are similar to switchgrass. Emissions from growing and harvesting energy cane are approximately 4 kg CO2eq/mmBtu higher than switchgrass, emissions from growing and harvesting giant reed are approximately 2 kg CO2eq/mmBtu lower than switchgrass, and emissions from growing and harvesting napiergrass are approximately 6 kg CO2eq/mmBtu higher than switchgrass. These are small changes in the overall lifecycle, representing at most a 6% change in the energy grass lifecycle impacts in comparison to the petroleum fuel baseline. Furthermore, the three feedstocks considered are expected to have similar or lower GHG emissions than switchgrass associated with other components of the biofuel lifecycle.

Under a hypothetical worst case, if the calculated increases in growing and harvesting the new feedstocks are incorporated into the lifecycle GHG emissions calculated for switchgrass, and other lifecycle components are projected as having similar GHG impacts to switchgrass (including land use change associated with switchgrass production), the overall lifecycle GHG reductions for biofuel produced from energy cane, giant reed, and napiergrass still meet the 60% reduction threshold for cellulosic biofuel, the lowest being a 64% reduction (for napiergrass F–T diesel) compared to the petroleum baseline. We believe these are conservative estimates, as use of energy cane, giant reed, or napiergrass as a feedstock is expected to have smaller land-use GHG impacts than switchgrass, due to their higher yields. The docket for this rule provides additional detail on the analysis of energy cane, giant reed, and napiergrass as biofuel feedstocks.

Although this analysis assumes energy cane, giant reed, and napiergrass biofuels produced for sale and use in the United States will most likely come from domestically produced feedstock, we also intend for the approved pathways to cover energy cane, giant reed, and napiergrass from other countries. We do not expect incidental amounts of biofuels from feedstocks produced in other nations to impact our average GHG emissions. Moreover, those countries most likely to be exporting energy cane, giant reed, or napiergrass or biofuels produced from these feedstocks are likely to be major producers which typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biofuels with energy cane, giant reed, or napiergrass grown in other countries should be similar to the GHG emissions we estimated for U.S. energy cane, giant reed, or napiergrass, though they could be slightly (and insignificantly) higher or lower. For example, the renewable biomass provisions under the Energy Independence and Security Act would prohibit direct conversion of previously unfarmed land in other countries into cropland for energy grass-based renewable fuel production. Furthermore, any energy grass production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for switchgrass production. Even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other countries will not impact our threshold analysis.

Based on our assessment of switchgrass in the RFS2 final rule and this comparison of GHG emissions from switchgrass and energy cane, giant reed, and napiergrass, we do not expect variations to be large enough to bring the overall GHG impact of fuel made from energy cane, giant reed or napier grass to come close to the 60% threshold for cellulosic biofuel. Therefore, EPA is including cellulosic biofuel produced from the cellulose, hemicelluloses and lignin portions of energy cane, giant reed, and napiergrass under the same pathways for which cellulosic biomass from switchgrass qualifies under the RFS2 final rule.

C. Lifecycle Greenhouse Gas Emissions Analysis for Certain Renewable Gasoline and Renewable Gasoline Blendstocks Pathways

In this rule, EPA is also adding pathways to Table 1 to § 80.1426 for the production of renewable gasoline and renewable gasoline blendstock using specified feedstocks, fuel production processes, and process energy sources. The feedstocks we considered are generally considered waste feedstocks such as crop residues or cellulosic components of separated yard waste. These feedstocks have been identified by the industry as the most likely feedstocks for use in making renewable gasoline or renewable gasoline blendstock in the near term due to their availability and low cost. Additionally, these feedstocks have already been analyzed by EPA as part of the RFS2 rulemaking for the production of other fuel types. Consequently, no new modeling is required and we rely on earlier assessments of feedstock production and distribution for assessing the likely lifecycle impact on renewable gasoline and renewable gasoline blendstock. We have also relied on the petroleum gasoline baseline assessment from the RFS2 rule for estimating the fuel distribution and use GHG emissions impacts for renewable gasoline and renewable gasoline blendstock. Consequently, the only new analysis required is of the technologies for turning the feedstock into renewable

[46] The F–T diesel process modeled applies to cellulosic diesel, jet fuel, heating oil, and naphtha.

gasoline and renewable gasoline blendstock.

1. Feedstock Production and Distribution

EPA has evaluated renewable gasoline and renewable gasoline blendstock pathways that utilize cellulosic feedstocks currently included in Table 1 to § 80.1426 of the regulations. The following feedstocks were evaluated:

- Cellulosic biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual cover crops;
- Cellulosic components of separated yard waste;
- Cellulosic components of separated food waste; and
- Cellulosic components of separated MSW.

The FASOM and FAPRI models were used to analyze the GHG impacts of the feedstock production portion of a fuel's lifecycle. In the RFS2 rulemaking, FASOM and FAPRI modeling was performed to analyze the emissions impact of using corn stover as a biofuel feedstock and this modeling was extended to some additional feedstock sources considered similar to corn stover. This approach was used for crop residues, slash, pre-commercial thinnings, tree residue and cellulosic components of separated yard, food, and MSW. These feedstocks are all excess materials and thus, like corn stover, were determined to have little or no land use change GHG impacts. Their GHG emission impacts are mainly associated with collection, transport, and processing into biofuel. See the RFS2 rulemaking preamble for further discussion. We used the results of the corn stover modeling in this analysis to estimate the upper bound of agricultural sector impacts from the production of the various cellulosic feedstocks noted above.

The agriculture sector modeling results for corn stover represent all of the direct and significant indirect emissions in the agriculture sector (feedstock production emissions) for a certain quantity of corn stover produced. For the RFS2 rulemaking, this was roughly 62 million dry tons of corn stover to produce 5.7 billion gallons of ethanol assuming biochemical fermentation to ethanol processing. We have calculated GHG emissions from feedstock production for that amount of corn stover. The GHG emissions were then divided by the total heating value of the fuel to get feedstock production emissions per mmBtu of fuel. In addition to the biochemical ethanol process, a similar analysis was completed for thermochemical ethanol and F–T diesel pathways as part of the RFS2 rulemaking.

In this rulemaking we are analyzing renewable gasoline and renewable gasoline blendstock produced from corn stover (and, by extension, other waste feedstocks). The number of gallons of fuel produced from a ton of corn stover (modeled process yields) is specific to the process used to produce renewable fuel. EPA has adjusted the results of the earlier corn stover modeling to reflect the different process yields and heating value of renewable gasoline or renewable gasoline blendstock product. The results of this calculation are shown below in Table 7.

We based our process yields and heating values for renewable gasoline and renewable gasoline blendstock on several process technologies representative of technologies anticipated to be used in producing these fuels. As discussed later in this section, there are four main types of fuel production technologies available for producing renewable gasoline. These four processes can be characterized as (1) thermochemical gasification, (2) catalytic pyrolysis and upgrading to renewable gasoline or renewable gaoline blendstock (''catalytic pyrolysis''), (3) biochemical fermentation with upgrading to renewable gasoline or renewable gasoline blendstock via carboxylic acid (''fermentation and upgrading''), and (4) direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock (''direct fermentation''). The thermochemical gasification process was modeled as part of the RFS2 final rule, included as producing naptha via the F–T process. Our analysis of the catalytic pyrolysis process was based on the modeling work completed by the National Renewable Energy Laboratory (NREL) for this rule for a process to make renewable gasoline blendstock.[47] The fermentation and upgrading process was modeled based on confidential business information (CBI) from industry for a unique process which uses biochemical conversion of cellulose to renewable gasoline via a carboxylic acid route. In addition, we have qualitatively assessed the direct fermentation to renewable gasoline process based on similarities to the biochemical ethanol process already analyzed as part of the RFS2 rulemaking. The fuel production section below provides further discussion on extending the GHG emissions results of the biochemical ethanol fermentation process to a biochemical renewable gasoline or renewable gasoline blendstock fermentation process. In some cases, the available data sources included process yields for renewable gasoline or renewable gasoline blendstock produced from wood chips rather than corn stover which was specifically modeled as a feedstock in the RFS2 final rule. We believe that the process yields are not significantly impacted by the source of cellulosic material whether the cellulosic material comes from residue such as corn stover or wood material such as from tree residues. We made the simplifying assumption that one dry ton of wood feedstock produces the same volume of renewable gasoline or renewable gasoline blendstock as one dry ton of corn stover. We believe this is reasonable considering that the RFS2 rulemaking analyses for biochemical ethanol and thermochemical F–T diesel processes showed limited variation in process yields between different feedstocks for a given process technology.[48] In addition, since the renewable gasoline and renewable gasoline blendstock pathways include feedstocks that were already considered as part of the RFS2 final rule, the existing feedstock lifecycle GHG impacts for distribution of corn stover were also applied to this analysis.[49]

Feedstock production emissions are shown in Table 7 below for corn stover. Corn stover feedstock production emissions are mainly a result of corn stover removal increasing the profitability of corn production (resulting in shifts in cropland and thus slight emission impacts) and also the need for additional fertilizer inputs to replace the nutrients lost when corn stover is removed. However, corn stover removal also has an emissions benefit as it encourages the use of no-till farming which results in the lowering of domestic land use change emissions. This change to no-till farming results in a negative value for domestic land use change emission impacts (see also Table 13 below). For other waste feedstocks (*e.g.,* tree residues and cellulosic components of separate yard, food, and MSW), the feedstock production emissions are even lower than the values shown for corn stover since the use of such feedstocks does not require land use changes or additional agricultural inputs. Therefore, we conclude that if the use of corn stover

[47] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011.

[48] Aden, Andy. Feedstock Considerations and Impacts on Biorefining. National Renewable Energy Laboratory (NREL). December 2009.

[49] Results for feedstock distribution are aggregated along with fuel distribution and are reported in a later section, see conclusion section.

as a feedstock in the production of renewable gasoline and renewable gasoline blendstock yields lifecycle GHG emissions results for the resulting fuel that qualify it as cellulosic biofuel (*i.e.,* it has at least a 60% lifecycle GHG reduction as compared to conventional fuel), then the use of other waste feedstocks with little or no land use change emissions will also result in renewable gasoline or renewable gasoline blendstock that qualifies as cellulosic biofuel.

TABLE 7—FEEDSTOCK PRODUCTION EMISSIONS FOR RENEWABLE GASOLINE AND RENEWABLE GASOLINE BLENDSTOCK PATHWAYS USING CORN STOVER

Feedstock production emission sources	Catalytic pyrolysis to renewable gasoline blendstock (g CO_2-eq./mmBtu)	Biochemical fermentation to renewable gasoline via carboxylic acid (g CO_2-eq./mmBtu)	Direct biochemical fermentation process to renewable gasoline and renewable gasoline blendstock (g CO_2-eq./mmBtu)
Domestic Livestock	7,648	6,770	~ 9,086
Domestic Farm Inputs and Fertilizer N_2O	1,397	1,237	~ 1,660
Domestic Rice Methane	366	324	~ 434
Domestic Land Use Change	−9,124	−8,076	~ −10,820
International Livestock	0	0	0
International Farm Inputs and Fertilizer N_2O	0	0	0
International Rice Methane	0	0	0
International Land Use Change	0	0	0
Total Feedstock Production Emissions	287	254	~ 361

The results in Table 7 differ for the different pathways considered because of the different amounts of corn stover used to produce the same amount of fuel in each case. Table 7 only considers the feedstock production impacts associated with the renewable gasoline pathways, other aspects of the lifecycle are discussed in the following sections.

2. Fuel Distribution

A petroleum gasoline baseline was developed as part of the RFS2 final rule which included estimates for fuel distribution emissions. Since renewable gasoline and renewable gasoline blendstocks when blended into gasoline are similar to petroleum gasoline, it is reasonable to assume similar fuel distribution emissions. Therefore, the existing fuel distribution lifecycle GHG impacts of the petroleum gasoline baseline from the RFS2 final rule were applied to this analysis.

3. Use of the Fuel

A petroleum gasoline baseline was developed as part of the RFS2 final rule which estimated the tailpipe emissions from fuel combustion. Since renewable gasoline and renewable gasoline blendstock are similar to petroleum gasoline, the non-CO_2 combustion emissions calculated as part of the RFS2 final rule for petroleum gasoline were applied to our analysis of the renewable gasoline and renewable gasoline blendstock pathways. Only non-CO_2 emissions were included since carbon fluxes from land use change are accounted for as part of the biomass feedstock production.

4. Fuel Production

In the RFS2 rulemaking, EPA analyzed several of the main cellulosic biofuel pathways: a biochemical fermentation process to ethanol and two thermochemical gasification processes, one producing mixed alcohols (primarily ethanol) and the other one producing mixed hydrocarbons (primarily diesel fuel). These pathways all exceeded the 60% lifecycle GHG threshold requirements for cellulosic biofuel using the specified feedstocks. Refer to the preamble and regulatory impact analysis (RIA) from the final RFS2 rule for more details. From these analyses, it was determined that ethanol and diesel fuel produced from the specified cellulosic feedstocks and processes would be eligible for cellulosic and advanced biofuel RINs.

The thermochemical gasification process to diesel fuel (via F–T synthesis) also produces a smaller portion of naphtha, a gasoline blendstock. In the final RFS2 rule, naphtha produced with specified cellulosic feedstocks by a F–T process was included as exceeding the 60% lifecycle GHG threshold, with an applicable D–Code of 3, in Table 1 to § 80.1426.

Since the final RFS2 rule was released, EPA has received several petitions and inquiries that suggest that renewable gasoline or renewable gasoline blendstock produced using processes other than the F–T process could also qualify for a similar D–Code of 3.[50] For the reasons described below, we have decided to authorize the generation of RINs with a D code of 3 for renewable gasoline and renewable gasoline blendstock produced using specified cellulosic feedstocks for the processes considered here.

Several routes have been identified as available for the production of renewable gasoline and renewable gasoline blendstock from renewable biomass. These include catalytic pyrolysis and upgrading to renewable gasoline or renewable gasoline blendstock (''catalytic pyrolysis''), biochemical fermentation with upgrading to renewable gasoline or renewable gasoline blendstock via carboxylic acid (''fermentation and upgrading''), and direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock (''direct fermentation'').[51] [52]

Similar to how we analyzed several of the main routes for cellulosic ethanol and cellulosic diesel for the final RFS2 rule, we have chosen to analyze the main renewable gasoline and renewable gasoline blendstock pathways in order to estimate the potential GHG reduction profile for renewable gasoline and renewable gasoline blendstock across a

[50] See *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2-lca-pathways.htm* for list of petitions received by EPA.

[51] Regalbuto, John. ''An NSF perspective on next generation hydrocarbon biorefineries,'' Computers and Chemical Engineering 34 (2010) 1393–1396. February 2010.

[52] Serrano-Ruiz, J., Dumesic, James. ''Catalytic routes for the conversion of biomass into liquid hydrocarbon transportation fuels,'' Energy Environmental Science (2011) 4, 83–99.

range of other production technologies for which we are confident will have at least as great of GHG emission reductions as those specifically analyzed.

a. Catalytic Pyrolysis to Renewable Gasoline and Renewable Gasoline Blendstock

The first production process we investigated for this rule is a catalytic fast pyrolysis route to bio-oils with upgrading to a renewable gasoline or a renewable gasoline blendstock. We utilized process modeling results from the National Renewable Energy Laboratory (NREL). Information provided by industry and claimed as CBI are based on similar processing methods and suggest similar results than those reported by NREL. Details on the NREL modeling are described further in a technical report available through the docket.[53] Catalytic pyrolysis involves the rapid heating of biomass to about 500°C at slightly above atmospheric pressure. The rapid heating thermally decomposes biomass, converting it into pyrolysis vapor, which is condensed into a liquid bio-oil. The liquid bio-oil can then be upgraded using conventional hydroprocessing technology and further separated into gasoline and diesel blendstock streams (cellulosic diesel from catalytic pyrolysis is already included as an acceptable pathway in the RFS2 program). Some industry sources also expect to produce smaller fractions of heating oil in addition to gasoline and diesel blendstocks. Excess electricity from the process is also accounted for in our modeling as a co-product credit in which any excess displaces U.S. average grid electricity. Excess electricity is generated from the use of co-product coke/char and product gases and is available because internal electricity demands are fully met. The estimated energy inputs and electricity credits shown in Table 8, below, utilize the data provided by the NREL process modeling. However, Industry sources also identified potential areas for improvements in energy use, such as the use of biomass fired dryers instead of natural gas fired dryers for drying incoming wet feedstocks and increased turbine efficiencies for electricity production which may result in lower energy consumption than estimated by NREL and thus improve GHG performance compared to our estimates here.

TABLE 8—2022 ENERGY USE AT CELLULOSIC BIOFUEL FACILITIES

[Btu/gal]

Technology	Biomass use	Natural gas use	Purchased electricity	Sold electricity
Catalytic Pyrolysis to Renewable Gasoline Blendstock	136,000	51,000	0	−2,000

The emissions from energy inputs were calculated by multiplying the amount of energy by emission factors for fuel production and combustion, based on the same method and factors used in the RFS2 final rulemaking. The emission factors for the different fuel types are from GREET and were based on assumed carbon contents of the different process fuels. The emissions from producing electricity in the U.S. were also taken from GREET and represent average U.S. grid electricity production emissions.

The major factors influencing the emissions from the fuel production stage of the catalytic pyrolysis pathway are the use of natural gas (mainly due to hydrogen production for hydroprocessing) and the co-products available for additional heat and power generation.[54] See Table 9 for a summary of emissions from fuel production.

TABLE 9—FUEL PRODUCTION EMISSIONS FOR CATALYTIC PYROLYSIS TO RENEWABLE GASOLINE BLENDSTOCK USING CORN STOVER

Lifecycle stage	Catalytic pyrolysis to renewable gasoline blendstock (g CO_2-eq./mmBtu)
On-Site & Upstream Emissions (Natural Gas & Biomass*)	31,000
Electricity Co-Product Credit	−3,000
Total Fuel Production Emissions:	28,000

Only non-CO_2 combustion emissions from biomass.

b. Fermentation and Upgrading to Renewable Gasoline and Renewable Gasoline Blendstock

The second production process we investigated is a biochemical fermentation process to intermediate carboxylic acids with catalytic upgrading to renewable gasoline or renewable gasoline blendstock. This process involves the fermentation of biomass using a mixed-culture of microorganisms that produce a variety of carboxylic acids. If the feedstock has high lignin content, then the biomass is pretreated to enhance digestibility. The acids are then neutralized to carboxylate salts and further converted to ketones and alcohols for refining into gasoline, diesel, and jet fuel.

The process requires the use of natural gas and hydrogen inputs.[55] No purchased electricity is required as lignin is projected to be used to meet all facility demands as well as provide excess electricity to the grid. EPA used the estimated energy and material inputs along with emission factors to estimate the GHG emissions from this process. The energy inputs and electricity credits are shown in Table 10, below. These inputs are based on Confidential Business Information (CBI), rounded to the nearest 1000 units, provided by industry as part of the petition process for new fuel pathways.

[53] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011.

[54] A steam methane reformer (SMR) is used to produce the hydrogen necessary for hydroprocessing. In the U.S. over 95% of hydrogen is currently produced via steam reforming (DOE, 2002 ''A National Vision of America's Transition to a Hydrogen Economy to 2030 and Beyond''). Other alternatives are available, such as renewable or nuclear resources used to extract hydrogen from water or the use of biomass to produces hydrogen. These alternative methods, however, are currently not as efficient or cost effective as the use of fossil fuels and therefore we conservatively estimate emissions from hydrogen production using the more commonly used SMR technology.

[55] Hydrogen emissions are modeled as natural gas and electricity demands.

TABLE 10—2022 ENERGY USE AT CELLULOSIC FACILITY

[Btu/gal]

Technology	Biomass use	Natural gas use	Purchased electricity	Sold electricity
Biochemical Fermentation to Renewable Gasoline or Renewable Gasoline Blendstock via Carboxylic Acid	49,000	59,000	0	−2,000

The process also uses a small amount of buffer material as neutralizer which was not included in the GHG lifecycle results due to its likely negligible emissions impact. The GHG emissions estimates from the fuel production stage are seen in Table 11.

TABLE 11—FUEL PRODUCTION EMISSIONS FOR BIOCHEMICAL FERMENTATION TO RENEWABLE GASOLINE OR RENEWABLE GASOLINE BLENDSTOCK VIA CARBOXYLIC ACID USING CORN STOVER

Lifecycle stage	GHG Emissions (g CO_2-eq./mmBtu)
On-Site & Upstream Emissions (Natural Gas & Biomass*)	33,000
Electricity Co-Product Credit	−3,000
Total Fuel Production Emissions:	30,000

*Only non-CO_2 combustion emissions from biomass

c. Direct Fermentation to Renewable Gasoline and Renewable Gasoline Blendstock

The third production process we investigated involves the use of microorganisms to ferment sugars hydrolyzed from cellulose directly into hydrocarbons which could be either a complete fuel as renewable gasoline or a renewable gasoline blendstock. The process is similar to the biochemical fermentation to ethanol pathway modeled for the final RFS2 rule with the major difference being the end fuel product, hydrocarbons instead of ethanol. Researchers believe that this new technology could achieve improvements over classical fermentation approaches because hydrocarbons separate spontaneously from the aqueous phase, thereby avoiding poisoning of microbes by the accumulated products and facilitating separation/collection of alkanes from the reaction medium.[56] In other words, some energy savings may result because fewer separation unit operations could be required for separating the final product from other reactants and there may be better conversion yields as the fermentation microorganisms are not poisoned when interacting with accumulated products. We also expect that the lignin/byproduct portions of the biomass from the fermentation to hydrocarbon process could be converted into heat and electricity for internal demands or for export, similar to the biochemical fermentation to ethanol pathway.

Therefore, we can conservatively extend our final RFS2 rule biochemical fermentation to ethanol process results to a similar (but likely slightly improved) process that instead produces hydrocarbons. Since the final RFS2 rule cellulosic ethanol GHG results were well above the 60% GHG reduction threshold for cellulosic biofuels, if actual emissions from other necessary changes to the direct biochemical fermentation to hydrocarbons process represent some small increment in GHG emissions, the pathway would still likely meet the threshold. Table 12 is our qualitative assessment of the potential emissions reductions from a process using biochemical fermentation to cellulosic hydrocarbons assuming similarities to the biochemical fermentation to cellulosic ethanol route from the final RFS2 rule.

TABLE 12—FUEL PRODUCTION EMISSIONS FOR RFS2 CELLULOSIC BIOCHEMICAL ETHANOL COMPARED TO DIRECT BIOCHEMICAL FERMENTATION TO RENEWABLE GASOLINE OR RENEWABLE GASOLINE BLENDSTOCK USING CORN STOVER

Lifecycle stage	RFS2 Cellulosic biochemical ethanol emissions (g CO_2-eq./mmBtu)	Direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock emissions (g CO_2-eq./mmBtu)
On-Site Emissions & Upstream (biomass)	3,000	< or = 3,000
Electricity Co-Product Credit	−35,000	= −35,000
Total Fuel Production Emissions[57]	−33,000	< or = −33,000

Table 13 below breaks down by stage the lifecycle GHG emissions for the renewable gasoline and renewable gasoline blendstock pathways using corn stover and the 2005 petroleum baseline. The table demonstrates the contribution of each stage in the fuel pathway and its relative significance in terms of GHG emissions. These results are also presented in graphical form in a supplemental memorandum to the docket.[58] As noted above, these analyses assume natural gas as the process energy when needed; using biogas or biomass as process energy would result in an even better lifecycle GHG impact.

[56] Serrano-Ruiz, J., Dumesic, James. ''Catalytic routes for the conversion of biomass into liquid hydrocarbon transportation fuels,'' Energy Environmental Science (2011) 4, 83–99.

[57] Numbers do not add up due to rounding.

[58] Memorandum to the Air and Radiation Docket EPA–HQ–OAR–2011–0542 ''Supplemental Information for Renewable Gasoline and Renewable Gasoline Blendstock Pathways Under the Renewable Fuel Standard (RFS2) Program''.

TABLE 13—LIFECYCLE GHG EMISSIONS FOR RENEWABLE GASOLINE AND RENEWABLE GASOLINE BLENDSTOCK PATHWAYS USING CORN STOVER, 2022

[kg CO_2-eq./mmBtu]

Fuel type	Catalytic pyrolysis to renewable gasoline blendstock	Biochemical fermentation to renewable gasoline via carboxylic acid	Direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock	2005 gasoline baseline
Net Domestic Agriculture (w/o land use change)	9	8	~ 11	
Net International Agriculture (w/o land use change):				
Domestic Land Use Change	−9	−8	~ −11	
International Land Use Change:				
Fuel Production	28	30	< or = −33	19
Fuel and Feedstock Transport	2	2	~ 2	*
Tailpipe Emissions	2	2	~ 1	79
Total Emissions	32	34	< or = −29	98
% Change from Baseline	−67%	−65%	−129%	

* Emissions included in fuel production stage.

d. Extension of Modeling Results to Other Production Processes Producing Renewable Gasoline or Renewable Gasoline Blendstock

In the RFS2 rulemaking, we modeled the GHG emissions results from the biochemical fermentation process to ethanol, thermochemical gasification processes to mixed alcohols (primarily ethanol) and mixed hydrocarbons (primarily diesel fuel). We extended these modeled process results to apply when the biofuel was produced from ''any'' process. We determined that since we modeled multiple cellulosic biofuel processes and all were shown to exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel using the specified feedstocks its was reasonable to extend to other processes that might develop as these would likely represent improvements over existing processes as the industry works to improve the economics of cellulosic biofuel production by, for example, reducing energy consumption and improving process yields. Similarly, this rule assesses multiple processes for the production of renewable gasoline and renewable gasoline blendstocks and all were shown to exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel using specified feedstocks.

As was the case in our earlier rulemaking, a couple reasons in particular support extending our modeling results to other production process producing renewable gasoline or renewable gasoline blendstock from cellulosic feedstock. Under this rule we analyzed the core technologies most likely available through 2022 for production of renewable gasoline and renewable gasoline blendstock routes from cellulosic feedstock as shown in literature. [59] [60] The two primary routes for renewable gasoline and renewable gasoline blendstock production from cellulosic feedstock can be classified as either thermochemical or biological. Each of these two major categories has two subcategories. The processes under the thermochemical category include:

- Pyrolysis—in which cellulosic biomass is decomposed with temperature to bio-oils and requires further catalytic processing to produce a finished fuel.
- Gasification—in which cellulosic biomass is decomposed to syngas with further catalytic processing of methanol to gasoline or through Fischer-Tropsch (F–T) synthesis to gasoline.

The processes under the biochemical category include:

- Direct fermentation—requires the release of sugars from biomass and the use of ''synthetic biology'' in which microorganisms are altered to ferment sugars straight into hydrocarbons instead of alcohols.
- Fermentation w/catalytic upgrading—requires the release of sugars from biomass and aqueous- or liquid-phase processing of sugars or intermediate fermentation products into hydrocarbons using solid catalysts,

As part of the modeling effort here, as well as for the RFS2 final rule, we have considered the lifecycle GHG impacts of the four possible production technologies mentioned above. The pyrolysis, direct fermentation, and fermentation with catalytic upgrading are considered in this rule and the gasification route was already included in the RFS2 final rule. In all cases, the processes that we have considered meet the 60% lifecycle GHG reduction required for cellulosic biofuels. Furthermore, we believe that the results from our modeling would cover all the likely variations within these potential routes for producing renewable gasoline and renewable gasoline blendstock which also use natural gas, biogas or biomass for process energy and that all such production variations would also meet the 60% lifecycle threshold.

The main reason for this is that we believe that our energy input assumptions are reasonable at this time but probably in some cases conservative for commercial scale cellulosic facilities. The cellulosic industry is in its early stages of development and many of the estimates of process technology GHG impacts is based on pre-commercial scale assessments and demonstration programs. Commercial scale cellulosic facilities will continue to make efficiency improvements over time to maximize their fuel products/co-products and minimize wastes. For cellulosic facilities, such improvements include increasing conversion yields and fully utilizing the biomass input for valuable products.

An example of increasing the amount of biomass utilized is the combustion of undigested or unconverted biomass for heat and power. The three routes that we analyzed for the production of renewable gasoline and renewable gasoline blendstock in today's rule assume an electricity production credit from the economically-driven use of

[59] Regalbuto, John. ''An NSF perspective on next generation hydrocarbon biorefineries,'' Computers and Chemical Engineering 34 (2010) 1393–1396. February 2010.

[60] Serrano-Ruiz, J., Dumesic, James. ''Catalytic routes for the conversion of biomass into liquid hydrocarbon transportation fuels,'' Energy Environmental Science (2011) 4, 83–99.

lignin or waste byproducts; we also ran a sensitivity case where no electricity credit was given. We found that all of the routes analyzed would still pass the GHG threshold without an electricity credit, providing confidence that over the range of technology options, these process technologies will surely allow the cellulosic biofuel produced to exceed the threshold for cellulosic biouel GHG performance. Without excess electricity production the catalytic pyrolysis pathway results in a 65% lifecycle GHG reduction, the biochemical fermentation via carboxylic acid pathway results in a 62% lifecycle GHG reduction, and the direct biochemical fermentation pathway results in a 93% reduction in lifecycle GHG emissions compared to the petroleum fuel baseline.

Additionally, while the final results reported in this rule include an electricity credit, this electricity credit is based on current technology for generating electricity; it is possible that over the next decade as cellulosic biofuel production matures, the efficiency with which electricity is generated at these facilities will also improve. Such efficiency improvements will tend to improve the GHG performance for cellulosic biofuel technologies in general including those used to produce renewable gasoline.

Furthermore, industry has identified other areas for energy improvements which our current pathway analyses do not include. Therefore, the results we have come up with for the individual pathway types represent conservative estimates and any variations in the pathways considered are likely to result in greater GHG reductions that what is considered here. For example, the variation of the catalytic pyrolysis route considered here resulted in a 67% reduction in lifecycle GHG emissions compared to the petroleum baseline. However, as was mentioned this was based on data from our NREL modeling and industry CBI data indicated more efficient energy performance which, if realized, would improve GHG performance. Another area for improvement in this pathway could be the use of anaerobic digestion to treat organics in waste water. If the anaerobic digestion is on-site, then enough biogas could potentially be produced to replace all of the fossil natural gas used as fuel and about half the natural gas fed for hydrogen production.[61] Thus, fossil natural gas consumption could be further minimized under certain scenarios. We believe that as commercial scale cellulosic facilities develop, more of these improvements will be made to maximize the use of all the biomass and waste byproducts available to bring the facility closer to energy self-sufficiency. These improvements could help to increase the economic profitability for cellulosic facilities where fossil energy inputs become costly to purchase. Therefore we can extend the modeling results for our pyrolysis route to all variations of this production technology which use natural gas, biogas or biomass for production energy for producing renewable gasoline or renewable gasoline blendstock.

The F–T gasification technology route considered as part of the RFS2 final rule resulted in an approximately 91% reduction in lifecycle GHG emissions compared to the petroleum baseline. This could be considered a conservative estimate as the process did not assume any excess electricity production, which as mentioned above could lead to additional GHG reductions. The F–T process involves gasifying biomass into syngas (mix of H_2 and CO) and then converting the syngas through a catalytic process into a hydrocarbon mix that is further refined into finished product. The F–T process considered was based on producing both gasoline and diesel fuel so that it was not optimized for renewable gasoline production. A process for producing primarily renewable gasoline rather than diesel from a gasification route should not result in a significantly worse GHG impacts compared to the mixed fuel process analyzed. Furthermore, as the lifecycle GHG reduction from the F–T process considered was around 91%, there is considerable room for variations in this route to still meet the 60% lifecycle GHG reduction threshold for cellulosic fuels. Therefore, in addition to the F–T process orginially analyzed for producing naphtha, we can extend the results based on the above analyses to include all variations of the gasification route which use natural gas, biogas or biomass for production energy for producing renewable gasoline or renewable gasoline blendstock. These variations include for example different catalysts and different refining processes to produce different mixes of final fuel product. While the current Table 1 entry in the regulations does not specify process energy sources, we are adding these specific eligible energy sources since we have not analyzed other energy sources (*e.g.* coal) as also allowing the pathway to meet the GHG performance threshold.

There is an even wider gap between the results modeled for the direct fermentation route and the cellulosic lifecycle GHG threshold. The variation we considered for the direct fermentation process resulted in an approximately 129% reduction in lifecycle GHG emissions compared to the petroleum baseline. This process did consider production of electricity as part of the process but as mentioned even if this was not the case the pathway would still easily fall below the 60% lifecycle threshold for cellulosic biofuels. If actual emissions from other necessary changes to the direct biochemical fermentation to hydrocarbons process represent some small increment in GHG emissions, the pathway would still likely meet the threshold. Therefore, we can extend the results to all variations of the direct biochemical route for renewable gasoline or renewable gasoline blendstock production which use natural gas, biogas or biomass for production energy.

The biochemical with catalytic upgrading route that we evaluated resulted in a 65% reduction in GHG emissions compared to the petroleum baseline. However, this can be considered a conservative estimate. For instance, the biochemical fermentation to gasoline via carboxylic acid route considered did not include the potential for generating steam from the combustion of undigested biomass and then using this steam for process energy. If this had been included, natural gas consumption could potentially be decreased which would lower the potential GHG emissions estimated from the process. Therefore, the scenario analyzed could be considered conservative in estimating actual natural gas usage. As was the case with the pyrolysis route considered, we believe that as commercial scale cellulosic facilities develop, improvements will be made to maximize the use of all the biomass and waste byproducts available to bring the facility closer to energy self-sufficiency. These improvements help to increase the economic profitability for cellulosic facilities where fossil energy inputs become costly to purchase. The processes we analyzed for this rulemaking utilized a mix of natural gas and biomass for process energy, with biogas replacing natural gas providing improved GHG performance. We have not analyzed other fuel types (*e.g.*, coal) and are therefore not approving processes that utilized other fuel sources at this point. Therefore, we are extending our results

[61] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011.

to include all variations of the biochemical with catalytic upgrading process utilizing natural gas, biogas or biomass for process energy.

While actual cellulosic facilities may show some modifications to the process scenarios we have already analyzed, our results give a good indication of the range of emissions we could expect from processes producing renewable gasoline and renewable gasoline blendstock from cellulosic feedstock, all of which meet the 60% cellulosic biofuel threshold (assuming they are utilizing natural gas, biogas or biomass for process energy). Technology changes in the future are likely to increase efficiency to maximize profits, while also lowering lifecycle GHG emissions. Therefore, we have concluded that since all of the renewable gasoline or renewable gasoline blendstock fuel processing methods we have analyzed exceed the 60% threshold using specific cellulosic feedstock types, we can conclude that processes producing renewable gasoline or renewable gasoline blendstock that fit within the categories of process analyzed here and are produced from the same feedstock types and using natural gas, biogas or biomass for process energy use will also meet the 60% GHG reduction threshold. In addition, while other technologies may develop, we expect that they will only become commercially competitive if they have better yield (more gallons per ton of feedstock) or lower production cost due to lower energy consumption. Both of these factors would suggest better GHG performance. This would certainly be the case if such processes also relied upon using biogas and/or biomass as the primary energy source. Therefore based on our review of the existing primary cellulosic biofuel production processes, likely GHG emission improvements for existing or new technologies, and consideration of the positive GHG emissions benefits associated with using biogas and/or biomass for process energy, we are approving for cellulosic RIN generation any process for renewable gasoline and renewable gasoline blendstock production using specified cellulosic biomass feedstocks as long as the process utilizes biogas and/or biomass for all process energy.

5. Summary

Three renewable gasoline and renewable gasoline blendstock pathways were compared to baseline petroleum gasoline, using the same value for baseline gasoline as in the RFS2 final rule analysis. The results of the analysis indicate that the renewable gasoline and renewable gasoline blendstock pathways result in a GHG emissions reduction of 65–129% or better compared to the gasoline fuel it would replace using corn stover as a feedstock. Since the renewable gasoline and renewable gasoline blendstock pathways which use corn stover as a feedstock all exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel, and since these pathways capture the likely current technologies and since future technology improvements are likely to increase efficiency and lower GHG emissions, we have determined that all processes producing renewable gasoline or renewable gasoline blendstock from corn stover can qualify if they fall in the following process characterizations:

- Catalytic pyrolysis and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Gasification and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Direct fermentation utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Fermentation and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources.
- Any process utilizing biogas and/or biomass as the only process energy sources.

As was the case for extending corn stover results to other feedstocks in the RFS2 final rule, these results are also reasonably extended to feedstocks with similar or lower GHG emissions profiles, including the following feedstocks:

- Cellulosic biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual cover crops;
- Cellulosic components of separated yard waste;
- Cellulosic components of separated food waste; and
- Cellulosic components of separated MSW.

For more information on the reasoning for extension to these other feedstocks refer to the feedstock production and distribution section or the RFS2 rulemaking (75 FR 14793–14795).

Based on these results, today's rule includes pathways for the generation of cellulosic biofuel RINs for renewable gasoline or renewable gasoline blendstock produced by catalytic pyrolysis and upgrading, gasification and upgrading, direct fermentation, fermentation and upgrading, all utilizing natural gas, biogas, and/or biomass as the only process energy sources or any process utilizing biogas and/or biomass as the only energy sources, and using corn stover as a feedstock or the feedstocks noted above. In order to qualify for RIN generation, the fuel must meet the other definitional criteria for renewable fuel (*e.g.*, produced from renewable biomass, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel) specified in the Clean Air Act and the RFS regulations.

A manufacturer of a renewable motor vehicle gasoline (including parties using a renewable blendstock obtained from another party), must satisfy EPA motor vehicle registration requirements in 40 CFR Part 79 for the fuel to be used as a transportation fuel. Per 40 CFR 79.56(e)(3)(i), a renewable motor vehicle gasoline would be in the Non-Baseline Gasoline category or the Atypical Gasoline category (depending on its properties) since it is not derived only from conventional petroleum, heavy oil deposits, coal, tar sands and/or oil sands (40 CFR 79.56(e)(3)(i)(5)).In either case, the Tier 1 requirements at 40 CFR 79.52 (emissions characterization) and the Tier 2 requirements at 40 CFR 79.53 (animal exposure) are conditions for registration unless the manufacturer qualifies for a small business provision at 40 CFR 79.58(d). For a non-baseline gasoline, a manufacturer under $50 million in annual revenue is exempt from Tier 1 and Tier 2. For an atypical gasoline there is no exemption from Tier 1, but a manufacturer under $10 million in annual revenue is exempt from Tier 2.

Registration for a motor vehicle gasoline at 40 CFR 79 is via EPA Form 3520–12, Fuel Manufacturer Notification for Motor Vehicle Fuel, available at: *http://www.epa.gov/otaq/regs/fuels/ffarsfrms.htm.*

D. Esterification Production Process Inclusion for Specified Feedstocks Producing Biodiesel

Table 14, shown below, includes pathways for biodiesel using specified feedstocks and the production process transesterification. Transesterification is the most commonly used method to produce biodiesel (*i.e.,* methyl esters) by

[62] Commonly used base catalysts include sodium hydroxide (NaOH), potassium hydroxide (KOH) and sodium methoxide ($NaOCH_3$).

reacting triglycerides with methanol typically under the presence of a base catalyst, see the simplified form in Equation 1.[62]

TABLE 14—EXCERPTS OF EXISTING FUEL PATHWAYS FROM § 40 CFR 80.1426

Fuel type	Feedstock	Production process requirements	D-Code
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4 (Biomass-Based Diesel).
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil.	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5 (Advanced Biofuel).

Equation 1: Transesterification

$$\text{Triglyceride (Ester)} + \text{Methanol (Alcohol)} \xrightarrow[\text{(catalyst)}]{} \text{Methyl Ester (Ester)} + \text{Glycerin}$$

While triglycerides are usually the main component of oils, fats, and grease feedstocks, there are other components such as free fatty acids (FFAs) that are typically removed prior to transesterification. Removal or conversion of FFAs is important if the traditional base-catalyzed transesterification production process is used since FFAs will react with base catalysts to produce soaps that inhibit the transesterification reaction. Table 15 below gives the usual ranges for FFAs found in biodiesel feedstocks.

TABLE 15—RANGES OF FFA IN BIODIESEL FEEDSTOCKS [63] [64]

Biodiesel feedstock	Percentage FFA
Refined vegetable oils	<0.05
Crude vegetable oils	0.3–0.7
Restaurant waste grease	2–7
Yellow grease	<15
Animal fat	5–30
Brown grease	>15
Trap grease	40–100

One of the most widely used methods for treating biodiesel feedstocks with higher FFA content is acid catalysis. Acid catalysis typically uses a strong acid such as sulfuric acid to catalyze the esterification of the FFAs and the transesterification of the triglycerides. The simplified form of the esterification process is given below in Equation 2. Acid esterification can be applied to feedstocks with FFA contents above 5%. Because the transesterification of triglycerides is slow under acid catalysis, a technique commonly used to overcome the reaction rate issue is to first convert the FFAs through an acid esterification (also known as an acid ''pretreatment'' step), and then follow-up with the traditional base-catalyzed transesterification of triglycerides. See Figure 2 for a general flow diagram of the acid esterification and subsequent transesterification biodiesel process.

Equation 2: Esterification

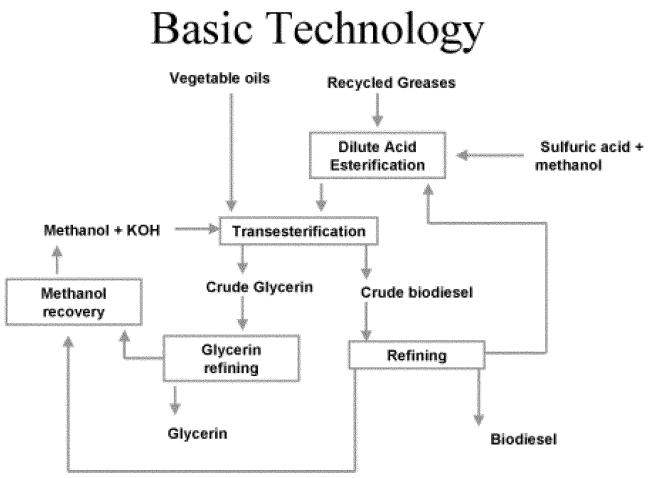
$$\text{Free Fatty Acid (Acid)} + \text{Methanol (Alcohol)} \xrightarrow[\text{(catalyst)}]{} \text{Methyl Ester (Ester)} + \text{Water}$$

[62] Commonly used base catalysts include sodium hydroxide (NaOH), potassium hydroxide (KOH) and sodium methoxide ($NaOCH_3$).

[63] Van Gerpen, J., Shanks, B., Pruszko, R., Clements, D., Knothe, G., ''Biodiesel Production Technology,'' NREL/SR–510–36244, July 2004.

[64] Van Gerpen, J., ''Used and Waste Oil and Grease for Biodiesel,'' NC State University A&T State University Cooperative Extension, *http://www.extension.org/pages/Used_and_Waste_Oil_and_Grease_for_Biodiesel.*

Figure 2: Process Description for Acid Esterification and Transesterification



Source: http://www1.eere.energy.gov/biomass/abcs_biofuels.html#biodprod

Under the RFS2 final rule, biodiesel from biogenic waste oils/fats/greases qualifies for D-Codes 4 and 5 using a ''transesterification'' process. This conclusion was based on the analysis of yellow grease as a feedstock in a process where there was an acid ''pretreatment'' or ''esterification'' process to treat the FFAs contained in the feedstock. In fact, one of the material inputs assumed in the modeling for the final RFS2 rule yellow grease pathway is sulfuric acid, which is the catalyst commonly used for acid esterification. However, we had not stipulated ''esterification'' as a qualified production process in Table 1 to § 40 CFR 80.1426. We believe this ambiguity could unnecessarily cause confusion as to whether esterification can also be used for the production of biodiesel under the currently approved pathways.

Since the biodiesel modeling completed for the final RFS2 rule actually includes esterification upstream of the transesterification process, we find it appropriate to clarify Table 1 to § 40 CFR 80.1426 to include ''esterification'' as a qualified process in which to produce biodiesel. As the modeling for yellow grease met an 86% GHG reduction emissions level, and yellow grease is typically <15% FFA content, it is reasonable to conclude that esterification and subsequent transesterification with a yellow grease feedstock containing FFAs at the very least up to 15% can meet the GHG reduction threshold for biomass-based diesel and advanced biofuel of 50%.

As noted in Table 15, however, there are feedstocks that may contain even higher levels of FFAs. As described below, EPA has evaluated the use of these higher FFA feedstocks to make biodiesel and has determined that use of such feedstocks also results in a biodiesel with lifecycle GHG emissions at least 50% less than that of conventional fuel.

The National Biodiesel Board (NBB) has conducted a comprehensive survey of the actual energy used by commercial biodiesel production plants in the U.S.[65] The survey depicts the amount of energy and incidental process materials such as acids used to produce a gallon of biodiesel. The survey data returned represents 37% of the surveyed 230 NBB biodiesel members in 2008 and includes producers using a variety of virgin oils and recycled or reclaimed fats and oils. While there is no specific data on the FFA content of the feedstocks used, the feedstocks did include reclaimed greases which represent the feedstocks which typically have the highest FFA content. As the data is partially aggregated, we used the maximum surveyed electricity and natural gas used at the facilities and a high estimate of ''materials used'' based on a sum of industry averages for all process materials for calculating potential GHG emissions. Even though some of the facilities might be processing feedstocks with relatively low FFA content, we believe that using these maximum observed inputs for energy used plus a high estimate for process materials used will estimate the highest GHG emissions profile for biodiesel production GHG emissions. When combined with the feedstock GHG emissions impact (see discussion below), the results still predict a GHG emissions reduction comfortably exceeding 50% as compared to the petroleum fuel it displaces. Therefore, there is little risk in predicting that any facility that utilizes esterification and feedstock over the range of likely FFA content can meet the 50% biomass-based diesel and advanced biofuel threshold.

According to the survey, the maximum electricity use for a producer reached as high as 3,071 Btu per gallon biodiesel. This is about 5 times higher than the industry average. The maximum natural gas usage for a producer reached as high as 12,324 Btu per gallon biodiesel, which is about 3.5 times higher than the industry average. For ''materials used'' only an industry average for each material was provided in the survey. Therefore, as a conservative estimate, we totaled all the average material inputs to equal 0.51 kg/gal biodiesel.[66] We believe that this is conservative because not all facilities are likely to use each and every one of the process materials listed in the survey (*e.g.,* we totaled all the acids

[65] National Biodiesel Board, Comprehensive Survey on Energy Use for Biodiesel Production (2008) *http://www.biodiesel.org/news/RFS/rfs2docs/NBB%20Energy%20Use%20Survey%20FINAL.pdf.*

[66] The material inputs include methanol, sodium methylate, sodium hydroxide, potassium hydroxide, hydrochloric acid, sulfuric acid, phosphoric acid, and citric acid. The majority of material input is from methanol.

used even though a facility is not likely to use each different acid). Thus, our estimate of materials used will estimate a level of maximum usage of materials at a given facility. In addition, we did not include a glycerin co-product credit when calculating emissions since the esterification reaction does not produce glycerin (see Equation 2). Using the same methodology as was used for the yellow grease modeling under RFS2, but using the high energy and materials use assumptions per the above discussion and omitting the glycerin co-product credit, we estimate the emissions from biodiesel processing at 23,708 gCO_2eq per mmBtu of biodiesel. The estimated GHG emissions reduction for the entire process is −71%. Since the GHG threshold is at −50% for biomass-based diesel and advanced biofuel, we believe that there is a large enough margin in the results to reasonably conclude that biodiesel using esterification of specified feedstocks with any level of FFA content meets the biomass-based diesel and advanced biofuel 50% lifecycle GHG reduction threshold. Therefore, we are including the process ''esterification'' as an approved biodiesel production process in Table 1 to § 40 CFR 80.1426. In addition, consistent with the modeling conducted for RFS2, we interpret the RFS regulations as they existed prior to today's rule as including a direct esterification process as part of the biodiesel pathways for which only ''trans-esterification'' was specifically referenced in Table 1 to § 40 CFR 80.1426.

V. Additional Changes to Listing of Available Pathways in Table 1 of 80.1426

We are also finalizing two changes to Table 1 to 80.1426 that were proposed on July 1, 2011 (76 FR 38844). The first change adds ID letters to pathways to facilitate references to specific pathways. The second change adds ''rapeseed'' to the existing pathway for renewable fuel made from canola oil.

On September 28, 2010, EPA published a ''Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program from Canola Oil'' (FR Vol. 75, No. 187, pg 59622–59634). In the July 1, 2011 NPRM (76 FR 38844) we proposed to clarify two aspects of the supplemental determination. First we proposed to amend the regulatory language in Table 1 to § 80.1426 to clarify that the currently-approved pathway for canola also applies more generally to rapeseed. While ''canola'' was specifically described as the feedstock evaluated in the supplemental determination, we had not intended the supplemental determination to cover just those varieties or sources of rapeseed that are identified as canola, but to all rapeseed. As described in the July 1, 2011 NPRM, we currently interpret the reference to ''canola'' in Table 1 to § 80.1426 to include any rapeseed. To eliminate ambiguity caused by the current language, however, we proposed to replace the term ''canola'' in that table with the term ''canola/rapeseed''. Canola is a type of rapeseed. While the term ''canola'' is often used in the American continent and in Australia, the term ''rapeseed'' is often used in Europe and other countries to describe the same crop. We received no adverse comments on our proposal, and thus are finalizing it as proposed. This change will enhance the clarity of the regulations regarding the feedstocks that qualify under the approved canola biodiesel pathway.

Second, we wish to clarify that although the GHG emissions of producing fuels from canola feedstock grown in the U.S. and Canada was specifically modeled as the most likely source of canola (or rapeseed) oil used for biodiesel produced for sale and use in the U.S., we also intended that the approved pathway cover canola/rapeseed oil from other countries, and we interpret our regulations in that manner. We expect the vast majority of biodiesel used in the U.S. and produced from canola/rapeseed oil will come from U.S. and Canadian crops. Incidental amounts from crops produced in other nations will not impact our average GHG emissions for two reasons. First, our analyses considered world-wide impacts and thus considered canola/rapeseed crop production in other countries. Second, other countries most likely to be exporting canola/rapeseed or biodiesel product from canola/rapeseed are likely to be major producers which typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biodiesel with canola/rapeseed grown in other countries should be very similar to the GHG emissions we modeled for Canadian and U.S. canola, though they could be slightly (and insignificantly) higher or lower. At any rate, even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other countries will not impact our threshold analysis. Therefore, EPA interprets the approved canola pathway as covering canola/rapeseed regardless of country origin.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under 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. The corrections, clarifications, and modifications to the final RFS2 regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final RFS2 regulations.

OMB has approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060– 0637 and 2060–0640. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities. The

relatively minor corrections and modifications this rule makes to the final RFS2 regulations do not impact small entities.

D. Unfunded Mandates Reform Act

This rule 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. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of 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. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations.

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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations. Thus, Executive Order 13132 does not apply to this action.

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

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 18355 (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 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 (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA 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. These amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

K. Congressional Review Act

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

VII. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: November 30, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

■ 2. Section 80.1401 is amended by addition of the following definitions of ''Renewable Gasoline'' and ''Renewable Gasoline Blendstock'' in alphabetical order to read as follows:

§ 80.1401 Definitions.

* * * * *

Renewable gasoline means renewable fuel made from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline in § 80.2(c).

Renewable gasoline blendstock means a blendstock made from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline blendstock in § 80.2(s).

* * * * *

■ 3. Section 80.1426 is amended by revising Table 1 in paragraph (f)(1) to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D-Code
A Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least two advanced technologies from Table 2 to this section.	6
B Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
C Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6
D Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
E Ethanol	Starches from crop residue and annual covercrops	Fermentation using natural gas, biomass, or biogas for process energy.	6
F Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil; Camelina oil.	One of the following: Trans-Esterification, Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
G Biodiesel, heating oil	Canola/Rapeseed oil	Trans-Esterification using natural gas or biomass for process energy.	4
H Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil Camelina oil.	One of the following: Trans-Esterification, Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
I Naphtha, LPG	Camelina oil	Hydrotreating	5
J Ethanol	Sugarcane	Fermentation	5
K Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, miscanthus, napiergrass, giant reed, and energy cane; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
L Cellulosic Diesel, jet fuel and heating oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, miscanthus, napiergrass, giant reed and energy cane; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

Fuel type	Feedstock	Production process requirements	D-Code
M Renewable Gasoline and Renewable Gasoline Blendstock.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings, tree residue, annual cover crops; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Catalytic Pyrolysis, Gasification and Upgrading, Direct Fermentation, Fermentation and Upgrading, all utilizing natural gas, biogas, and/or biomass as the only process energy sources. Any process utilizing biogas and/or biomass as the only process energy sources.	3
N Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6
O Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
P Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5

* * * * *

[FR Doc. 2011–31580 Filed 1–4–12; 8:45 am]

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S. 384/P.L. 112–80
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