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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 7, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 77, No. 14
Monday, January 23, 2012

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 505

RIN 0518–AA04

Modification of Interlibrary Loan Fee Schedule

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Research Service amends its regulations on the fee schedule for interlibrary loan from the collections of the National Agricultural Library (NAL). The revised fee schedule is based on the method of payment used (traditional invoicing through the National Technical Information Service (NTIS) or payment through the Online Computer Library Center (OCLC) network's Interlibrary Fee Management program, a debit/credit program for interlibrary loan) and eliminates the current billing surcharge, which is instead incorporated into the revised flat fee.

DATES: Effective January 23, 2012, and is applicable beginning January 1, 2012.

ADDRESSES: Address correspondence to Kay Derr, Information Services and Collections Branch, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2351.

FOR FURTHER INFORMATION CONTACT: Kay Derr, (301) 504–5879 or *kay.derr@ars.usda.gov.*

FOR FURTHER INFORMATION CONTACT: This rule was published as a proposed rule for comment on September 16, 2011. See 76 FR 57681, September 16, 2011. The potential fee change and publication of the proposed rule were announced on the User Fees section of the NAL Web page and through NAL's Twitter account. Current users of the service were also notified directly by mail and invited to comment. No comments were received.

The previous fee schedule had not been updated since April 2000. This revision brings these fees up to date in order to support the current cost of providing the service. Elimination of the separate billing surcharge will enable customers to estimate charges more easily and distribute them more effectively within their own institutions.

All of the current services will continue to be offered under the revised fee schedule. The lower fee for payment through the Interlibrary Loan Fee Management (IFM) program reflects the lower administrative cost of these transactions due to the fact that IFM payment is wholly electronic and no invoices have to be produced or mailed. The National Agricultural Library will continue to invoice and collect fees through the National Technical Information Service (NTIS) for libraries which do not pay through IFM. The fee for invoiced requests is higher in order to cover the fee charged by NTIS for producing and processing invoices. This change has been reviewed by the Office of Management and Budget and deemed ''not significant.''

This action is not a ''rule'' as defined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and thus is exempt from provisions of that Act.

This action is not likely to have an impact of $100 million or more on the U.S. economy and thus is not a ''significant regulatory action'' under Executive Order (''E.O.'') 12866. Therefore, this notice is not subject to formal Office of Management and Budget review.

List of Subjects in 7 CFR Part 505

Agricultural research, Agriculture, Libraries, Research, User fees.

For reasons set forth in the preamble, the Agricultural Research Service revises 7 CFR part 505 to read as follows:

PART 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.

Authority: 5 U.S.C. 301; 7 U.S.C. 3125a.

§ 505.1 Scope and purpose.

These regulations establish fees for loans, copying, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

§ 505.2 Fees for loans, copying, and reproduction of materials in library collections.

(a) NAL will provide interlibrary loan service (including loans of original materials from its collections and copies of portions of documents with copyright compliance) and charge fees for such service to other non-Federal and non-USDA libraries and institutions. Loans will be provided within the United States and Canada only. Copies will be provided within the United States and internationally.

(b) Interlibrary loan service will be provided at a flat fee of $18 per request for libraries paying electronically through the Online Computer Library Center's (OCLC) Interlibrary Loan Fee Management (IFM) program and at a flat rate of $25 per request for libraries paying by other methods.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if replacement cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item plus a $50.00 processing fee.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.) plus a preparation fee of $25.00 per half hour or fraction thereof.

§ 505.3–505.5 [Reserved]

§ 505.6 Payment of fees.

NAL charges for interlibrary loans through OCLC's IFM Program (an electronic debit/credit payment program for libraries using OCLC's resource sharing service) or by invoice through the National Technical Information Service (NTIS) of the United States Department of Commerce. Payment for invoiced services will be made by check, money order, or credit card in U.S. funds directly to NTIS upon receipt of invoice from NTIS. NAL encourages

users to establish deposit accounts with NTIS for payment of interlibrary loan fees. Subject to a reduction for the actual costs of performing the invoicing service by NTIS, all funds will be returned to NAL for credit to the appropriations account charged with the cost of processing the interlibrary loan request.

Dated: January 13, 2012.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. 2012–1251 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724 and 1726

RIN 0572–AC20

Electric Engineering, Architectural Services, Design Policies and Construction Standards

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending the contract threshold amounts that require borrowers to use certain prescribed agency contract forms and the contract dollar amounts that require RUS review of contracts prior to the contract being effective. Also, RUS is raising the threshold amounts requiring RUS borrowers to use certain required procurement methods for materials, equipment and contract services that otherwise would require RUS prior approval. The changes in the threshold amounts will reduce the number of contracts reviewed by the RUS.

DATES: This rule is effective February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Donald Junta, USDA–Rural Utilities Service, 1400 Independence Avenue SW., Stop 1569, Washington, DC 20250–1569. Telephone (202) 720–3720 or email to *donald.junta@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards in § 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this final rule will be preempted; no retroactive effect will be given to the final rule; and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agency is not required by 5 U.S.C. 551 *et seq,* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

This rule contains no additional reporting or recordkeeping burdens under Office of Management and Budget (OMB) control numbers 0572–0107 and 0572–0118 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Executive Order 13132

This rule will not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring the preparation of a Federalism Assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at *http://www.cfda.gov.*

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Over the last year, the Agency has conducted extensive tribal consultations related to the implementation of the Substantially Underserved Trust Area (SUTA) provisions of the 2008 Farm Bill. During those consultations all RUS programs were discussed. A specific regulation on SUTA is being prepared.

The policies contained in this rule do not impose substantial unreimbursed compliance costs on Indian Tribal governments or have tribal implications that preempt tribal law.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

This rule has been examined under RUS environmental regulations at 7 CFR part 1794. The Administrator has determined that this rule is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

E-Government Act Compliance

RUS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

The Rural Electrification Act of 1936 (7 U.S.C. 901–950b (REAct)), as amended, establishes the authority for RUS to provide loans and loan guarantees to eligible entities for furnishing electric service to rural areas. The standard loan agreement between RUS and its electric borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services and architectural services for transactions above the established threshold dollar levels (''threshold levels'').

Electric borrowers are also expected to obtain RUS approvals for procuring materials, equipment and contracting services for use in the electric systems where the contract amount exceeds specified threshold levels.

Threshold levels that apply to contracts entered into by borrowers

were initially established to capture significant transactions that could adversely affect RUS loan security. The threshold levels were most recently revised in 1995. Cost increases and inflation over time have greatly increased the need for more approvals than is consistent with the earlier threshold levels. The result has been increased delay to the borrowers in receiving RUS approvals and increased workloads at RUS. Inflation is not the only relevant variable in the RUS proposal to modify the threshold levels. In this rule RUS has also considered the level of sophistication in borrowers' operations, RUS staff constraints and competing priorities within RUS. The need to adjust the threshold levels is a result of these considerations.

In response to borrowers' requests and mindful of the directives in Executive Order 13563 of January 18, 2011, to determine if any regulations should be modified to make agencies' regulations less burdensome in achieving their objectives, RUS undertook an examination of certain thresholds used in determining when the use of prescribed forms and approvals would apply. RUS examined the number of contracts it reviewed over the last several years. RUS also reviewed the rate of inflation factors published in the Handy-Whitman Index of Public Utility Construction Costs in order to adjust for inflation occurring after the existing requirements were established.

As a result of this review, RUS determined that although it remains necessary and appropriate to continue these requirements as one means of oversight of its borrowers' financial and operational activities, the existing threshold levels should be raised. Raising these threshold levels will reduce the volume of contracts that borrowers will be required to submit for RUS approvals. Doing so will reduce the paperwork burdens on borrowers and the administrative burdens on RUS.

RUS is revising these threshold levels an average of 300 percent. RUS estimates that the revision will reduce the volume of contracts it receives pursuant to these requirements by 50 percent.

The Agency published a proposed rule on May 17, 2011, at 76 FR 28333 proposing to amend the contract threshold requirements.

Discussion of Comments and Changes

RUS received two submissions electronically on this proposed rule by the July 18, 2011, comment deadline. The first submission was received from the National Rural Electric Cooperative Association (NRECA). The submission is summarized below with the Agency's responses as follows:

Issue 1: Commenter proposed that the amounts in the proposed regulation be established as a ''base case,'' and escalated annually using the Handy Whitman Index of Public Utility Construction Costs.

Response: The Agency does not concur at this time. The Agency believes that the threshold limits set forth are appropriate at this time. The Agency may re-evaluate the threshold limits at a later date.

Issue 2: Commenter proposed a clarifying change that a statement be added to the regulation that a borrower's voluntary use of an RUS form contract when not required by this proposed regulation does not subject the contract to RUS review and approval.

Response: Agency concurs. A clarifying statement is not needed if the RUS form contract is not required.

Issue 3: Commenter proposed allowing a borrower to seek RUS' prior permission to use negotiated bidding in the case where the formal or informal competitive bidding required in 7 CFR 1726.125(b)(2) is not practical.

Response: Agency does not concur. The current rule allows ''multiparty negotiations'' to be used in 7 CFR 1726.125 (b)(3), which is similar to the comment received to allow ''negotiated bidding.''

The second submission was received from Tri-State Generation and Transmission Association, Inc. (Tri-State). Tri-State stated in their submission that ''The proposed rules will increase Tri-State efficiency and reduce burdens on Tri-State.'' Tri-State also said in their submission that ''RUS should adopt the Proposed Rules.''

Response: Agency concurs. The proposed regulation will increase efficiency and reduce burdens on all RUS borrowers.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, RUS amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

■ 1. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart E—Electric System Design

■ 2. Section 1724.54 is amended by revising paragraph (e)(2) and paragraph (g)(2) to read as follows:

§ 1724.54 Requirements for RUS approval of plans and specifications.

* * * * *

(e) * *

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $5,000,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

* * * * *

(g) * * *

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $1,500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

* * * * *

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 3. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 4. Section 1726.14 is amended by revising the definition of ''minor modification or improvement'' to read as follows:

§ 1726.14 Definitions.

* * * * *

Minor modification or improvement means a project the cost of which is $150,000 or less, exclusive of the cost of owner furnished materials.

* * * * *

Subpart B—Distribution Facilities

■ 5. Section 1726.50 is amended by revising paragraph (a) to read as follows:

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is more than $1,000,000.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order equal to $1,000,000 or less for purchases of equipment, and for all materials.

* * * * *

■ 6. Section 1726.51 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2) to read as follows:

§ 1726.51 Distribution line construction.

(a) * * *

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $500,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

* * * * *

(b) * * *

(1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $750,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) In addition to the cumulative total stipulated in paragraph (b)(1) of this section, a borrower may use Multiparty Unit Price Quotations to award contracts in amounts of up to a cumulative total of $1,000,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

Subpart C—Substation And Transmission Facilities

■ 7. Section 1726.76 is amended by revising paragraph (a) to read as follows:

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $1,000,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $1,000,000 and for all materials.

* * * * *

■ 8. Section 1726.77 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 1726.77 Substation and transmission line construction.

* * * * *

(b) * * *

(1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $750,000 or one percent of NUP (not to exceed $5,000,000), whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

(c) *Contract approval.* Individual contracts in the amount of $750,000 or more or one percent of NUP (not to exceed $1,500,000 for distribution borrowers or $4,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

Subpart D—Generation Facilities

■ 9. Section 1726.125 is amended by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 1726.125 Generating plant facilities.

* * * * *

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for the purchase of generating plant equipment in the amount of $5,000,000 or more and for any generating plant equipment contract requiring RUS approval.

(2) The borrower shall use RUS Form 200, Construction Contract—Generating, for generating project construction contracts in the amount of $5,000,000 or more and for any generating project construction contract requiring RUS approval.

(3) The borrower may, in its discretion, use other contract forms or written purchase order forms for those contracts in amounts of less than $5,000,000 and that do not require RUS approval.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of less than $5,000,000 each.

(2) If the amount of the contract is $5,000,000 or more or if the contract requires RUS approval, the borrower must use formal or informal competitive bidding to award the contract.

* * * * *

Subpart E—Buildings

■ 10. Section 1726.150 is amended by revising paragraph (b) to read as follows:

§ 1726.150 Headquarters buildings.

* * * * *

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts in amounts of up to a cumulative total of $750,000 or one percent of NUP (not to exceed $5,000,000), whichever is greater, per calendar year of headquarters construction (including minor modifications or improvements). The borrower shall use formal competitive bidding for all other headquarters contract construction.

* * * * *

Subpart F—General Plant

■ 11. Section 1726.176 is amended by revising paragraphs (b)(2)(i) and (b)(3) to read as follows:

§ 1726.176 Communications and control facilities.

* * * * *

(b) * * *

(2) *Procurement procedures.* (i) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $750,000 or one percent of NUP (not to exceed $5,000,000), whichever is greater, per calendar year of communications and control facilities construction (including minor modifications or improvements),

exclusive of the cost of owner furnished materials and equipment.

* * * * *

(3) *Contract approval.* Individual contracts in amounts of $750,000 or more or one percent of NUP (not to exceed $1,500,000 for distribution borrowers or $4,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

Dated: January 11, 2012.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2012–1157 Filed 1–20–12; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2008–0554]

RIN 3150–AI35

American Society of Mechanical Engineers (ASME) Codes and New and Revised ASME Code Cases; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting the preamble, or statements of consideration (SOC), and the codified text in a final rule that was published in the **Federal Register** on June 21, 2011 (76 FR 36232). The final rule amended the NRC's regulations to incorporate by reference various editions and addenda to the ASME Boiler and Pressure Vessel (B&PV) Code, and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). The final rule also incorporated by reference (with conditions on their use) ASME B&PV Code Cases N–722–1 and N–770–1. This document is necessary to correct typographical, formatting, and punctuation errors.

DATES: The correction is effective on January 23, 2012 and applicable to July 21, 2011, the date the original rule became effective. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Office of the Federal Register as of July 21, 2011.

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

SUPPLEMENTARY INFORMATION: The NRC published a final rule in the **Federal Register** on June 21, 2011 (76 FR 36232), amending the NRC's regulations to incorporate by reference various editions and addenda to the ASME B&PV, and the OM Code. The final rule also incorporated by reference (with conditions on their use) ASME B&PV Code Cases N–722–1 and N–770–1. This document is necessary to correct typographical, formatting, and punctuation errors in both the SOC and the codified text. Also, as published, the final regulations contain errors which may prove to be misleading and need to be clarified. The following corrects the SOC to the June 21, 2011 document:

1. On page 36241, in the second column, third paragraph, the first sentence after *Comment* is corrected to read as follows:

The NRC should reconsider the change specifying that Section E–1200 is not acceptable.

2. On page 36258, in the third column, the last paragraph, through page 36259, first column, the first paragraph, is corrected to read as follows:

The conditions in § 50.55a(b)(3)(i), (b)(3)(ii), and (b)(3)(iv) continue to apply to the 2005 and 2006 Addenda because the earlier ASME OM Code provisions that these regulations are based on were not revised in the 2005 and 2006 Addenda of the ASME OM Code to address the underlying issues which led the NRC to impose the conditions on the ASME OM Code.

3. On page 36265, in the third column, the third paragraph is corrected to read as follows:

Paragraph (g)(6)(ii)(F)(*10*) is a new condition as a result of incorporating Code Case N–770–1 in lieu of Code Case N–770. General Note (b) of Figure 5(a) in Code Case N–770–1 permits the use of an alternative examination volume for welds mitigated by optimized weld overlays. This alternative examination volume was not issued as part of the proposed rule and, therefore, this condition in the final rule prohibits the use of the alternative examination volume. While the NRC does not have a technical objection to General Note (b) of Figure 5(a), licensees must obtain NRC authorization to use the alternative examination volume pursuant to 10 CFR 50.55a(a)(3)(i) or (ii).

4. On page 36266, in the second column, second paragraph, the second sentence is corrected to read as follows:

Also, some of the terminology used and some details in this AMP are based on the 1992 Edition.

5. On page 36266, in the third column, first paragraph, the second sentence is revised to read as follows:

A license renewal applicant may either augment its AMPs in these areas, as described in the GALL report, or propose alternatives (exceptions) for the NRC to review as part of a plant-specific program element justification for its AMP. The GALL Revision 1, in AMP XI.M11A, provides an acceptable approach for aging management—through inservice inspection—of PWR nickel-alloy upper vessel head penetration nozzles.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78

also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.55a, revise the introductory text of paragraph (b), and paragraphs (b)(1)(iii), (b)(2)(xv)(K)(*1*)(*i*), (b)(2)(xv)(K)(*2*)(*ii*), (b)(3)(vi), (g)(4)(i), (g)(4)(ii), (g)(6)(ii)(F)(*5*) and (g)(6)(ii)(F)(*10*) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) *Standards approved for incorporation by reference.* Systems and components of boiling and pressurized water cooled nuclear power reactors must meet the requirements of the following standards referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section: The ASME Boiler and Pressure Vessel Code, Section III, Division 1 (excluding Nonmandatory Appendices), and Section XI, Division 1; the ASME Code for Operation and Maintenance of Nuclear Power Plants; NRC Regulatory Guide (RG) 1.84, Revision 35, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III'' (July 2010), RG 1.147, Revision 16, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1'' (July 2010), and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code'' (June 2003); and the following ASME Code Cases, approved with conditions by the NRC: N–722–1, ''Additional Examinations for PWR Pressure Retaining Welds in Class 1 Components Fabricated with Alloy 600/82/182 Materials, Section XI, Division 1'' (ASME Approval Date: January 26, 2009), in accordance with the requirements in paragraph (g)(6)(ii)(E) of this section; N–729–1, ''Alternative Examination Requirements for PWR Reactor Vessel Upper Heads With Nozzles Having Pressure-Retaining Partial-Penetration Welds, Section XI, Division 1'' (ASME Approval Date: March 28, 2006), in accordance with the requirements in paragraph (g)(6)(ii)(D) of this section; and N–770–1, ''Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities, Section XI, Division 1'' (ASME Approval Date: December 25, 2009), in accordance with the requirements in paragraph (g)(6)(ii)(F) of this section. These standards have been approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASME Boiler and Pressure Vessel Code, the ASME Code for Operation and Maintenance of Nuclear Power Plants, ASME Code Case N–722–1, ASME Code Case N–729–1, and ASME Code Case N–770–1 may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016, phone (800) 843–2763, or through the Web at *http://www.asme.org/Codes/*. Single copies of NRC Regulatory Guides 1.84, Revision 35; 1.147, Revision 16; and 1.192 may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax to (301) 415–2289; or by email to *DISTRIBUTION.RESOURCE@nrc.gov*. Copies of the ASME Codes and NRC Regulatory Guides incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738 or call (301) 415–5610, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

(1) * * *

(iii) *Seismic design of piping.* Applicants or licensees may use Subarticles NB–3200, NB–3600, NC–3600, and ND–3600 for seismic design of piping, up to and including the 1993 Addenda, subject to the condition specified in paragraph (b)(1)(ii) of this section. Applicants or licensees may not use these subarticles for seismic design of piping in the 1994 Addenda through the 2005 Addenda incorporated by reference in paragraph (b)(1) of this section except that Subarticle NB–3200 in the 2004 Edition through the 2008 Addenda may be used by applicants and licensees subject to the condition in paragraph (b)(1)(iii)(A) of this section. Applicants or licensees may use Subarticles NB–3600, NC–3600 and ND–3600 for the seismic design of piping in the 2006 Addenda through the 2008 Addenda subject to the conditions of this paragraph corresponding to these subarticles.

* * * * *

(2) * * *

(xv) * * *

(K) * * *

(*1*) * * *

(*i*) For detection, a minimum of four flaws in one or more full-scale nozzle mock-ups must be added to the test set. The specimens must comply with Supplement 6, paragraph 1.1, to Appendix VIII, except for flaw locations specified in Table VIII S6–1. Flaws may be notches, fabrication flaws or cracks. Seventy-five (75) percent of the flaws must be cracks or fabrication flaws. Flaw locations and orientations must be selected from the choices shown in paragraph (b)(2)(xv)(K)(*4*) of this section, Table VIII–S7–1—Modified, with the exception that flaws in the outer eighty-five (85) percent of the weld need not be perpendicular to the weld. There may be no more than two flaws from each category, and at least one subsurface flaw must be included.

* * * * *

(*2*) * * *

(*ii*) When the examination volume defined in paragraph (b)(2)(xv)(K)(*2*)(*i*) of this section cannot be effectively examined in all four directions, the examination must be augmented by examination from the nozzle bore using a procedure and personnel qualified in accordance with paragraph (b)(2)(xv)(K)(*1*) of this section.

* * * * *

(3) * * *

(vi) *Exercise interval for manual valves.* Manual valves must be exercised on a 2-year interval rather than the 5-year interval specified in paragraph ISTC–3540 of the 1999 Addenda through the 2005 Addenda of the ASME OM Code, provided that adverse conditions do not require more frequent testing.

* * * * *

(g) * * *

(4) * * *

(i) Inservice examinations of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading of fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, when using Section XI; or Regulatory Guide 1.192 when using the OM Code, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with

the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, when using Section XI; or Regulatory Guide 1.192 when using the OM Code, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section. However, a licensee whose inservice inspection interval commences during the 12 through 18-month period after July 21, 2011 may delay the update of their Appendix VIII program by up to 18 months after July 21, 2011.

* * * * *

(6) * * *

(ii) * * *

(F) * * *

(*5*) All hot-leg operating temperature welds in Inspection Items G, H, J, and K must be inspected each interval. A 25 percent sample of Inspection Item G, H, J and K cold-leg operating temperature welds must be inspected whenever the core barrel is removed (unless it has already been inspected within the past 10 years) or 20 years, whichever is less.

* * * * *

(*10*) General Note (b) to Figure 5(a) of Code Case N–770–1 pertaining to alternative examination volume for optimized weld overlays may not be applied unless NRC approval is authorized under paragraphs (a)(3)(i) or (a)(3)(ii) of this section.

* * * * *

Dated at Rockville, Maryland, this 17th day of January 2012.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2012–1212 Filed 1–20–12; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD59

Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Final rule.

SUMMARY: The FDIC is adopting this final rule (''Rule'') requiring an insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure (''Resolution Plan''). The Rule establishes the requirements for submission and content of a Resolution Plan, as well as procedures for review by the FDIC. The Rule requires a covered insured depository institution (''CIDI'') to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors. The Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning.

The Interim Final Rule, which preceded this Rule, was effective January 1, 2012,[1] and remains in effect until superseded by this Rule on April 1, 2012.

DATES: The Rule is effective April 1, 2012.

FOR FURTHER INFORMATION CONTACT: John F. Simonson, Deputy Director, Office of Complex Financial Institutions, (202) 898–6681, Hashim Hamandi, Section Chief, Office of Complex Financial Institutions, (202) 898–6884, Richard T. Aboussie, Associate General Counsel, (703) 562–2452, David N. Wall, Assistant General Counsel, (703) 562–2440, Mark A. Thompson, Counsel, (703) 562–2529, Mark G. Flanigan, Counsel, (202) 898–7426, or Shane Kiernan, Senior Attorney, (703) 562–2632.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC is charged by Congress with the responsibility for insuring the deposits of banks and thrifts in the United States, and with serving as receiver of such institutions if those banks and thrifts should fail. As of September 30, 2011, the FDIC insured approximately $6.78 trillion in deposits in more than 7,445 depository institutions. To evaluate potential loss severity and to enable it to perform its resolution functions most efficiently, the FDIC is requiring each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a Resolution Plan. Currently, 37 insured depository institutions are covered by the Rule. Those institutions held approximately $4.14 trillion in insured deposits or nearly 61 percent of all insured deposits as of September 30, 2011.

In implementing the deposit insurance program and in efficiently and effectively resolving failed depository institutions, the FDIC strengthens the stability of, and helps maintain public confidence in, the banking system in the United States. In its efforts to achieve this objective and to implement its insurance and resolution functions, the FDIC requires a comprehensive understanding of the organization, operation and business practices of insured depository institutions in the United States, with particular attention to the nation's largest and most complex insured depository institutions.

To ensure that the FDIC can effectively carry out these core responsibilities, the Rule requires a limited number of the largest insured depository institutions to provide the FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures. The Rule requires these institutions to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved in an orderly and timely manner in the event of receivership. The Rule also makes a critically important contribution to the FDIC's implementation of its statutory receivership responsibilities by providing the FDIC as receiver with the information it needs to make orderly and cost-effective resolutions much more feasible. Based upon its experience resolving failed insured depository institutions (and in particular, large and complex insured depository institutions), the FDIC has concluded that Resolution Plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution and the development of such plans should begin promptly.

Since the recent financial crisis began in late 2008, financial authorities throughout the world have recognized and agreed that advance planning for the resolution of large, complex financial institutions is critical to minimizing the disruption that a failure

[1] 76 FR 58379 (September 21, 2011).

of such an institution may have as well as the costs of its resolution. At the 2009 Pittsburgh Summit, and in response to the crisis, the G20 Leaders called on the Financial Stability Board (''FSB'') to propose possible measures to address the ''too big to fail'' and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of ''internationally consistent firm-specific contingency and resolution plans.'' The FSB continues its efforts to develop the international standards for contingency and resolution plans and to evaluate how to improve the capacity of national authorities to implement orderly resolutions of large and interconnected financial firms and periodically reports its progress to the G20 Leaders.[2]

The FSB's program has built on work undertaken by the Basel Committee on Banking Supervision's Cross-border Bank Resolution Group, co-chaired by the FDIC, since 2007. In its final Report and Recommendations of the Crossborder Bank Resolution Group, issued on March 18, 2010, the Basel Committee emphasized the importance of preplanning and the development of practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. In its review of the financial crisis, the Report found that one of the main lessons was that the complexity and interconnectedness of large financial conglomerates made crisis management and resolutions more difficult and unpredictable.

Similarly, the FSB's Principles for Cross-Border Cooperation on Crisis Management commit national authorities to ensure that firms develop adequate contingency plans, including information regarding group structure, and legal, financial and operational intra-group dependencies; the interlinkages between the firms and financial system (*e.g.,* in markets and infrastructures) in each jurisdiction in which they operate; and potential impediments to a coordinated solution stemming from the legal frameworks and bank resolution procedures of the countries in which the firm operates. The FSB Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis. The FSB recommendations strongly encourage firms to maintain contingency plans and procedures for use in a resolution situation (*e.g.,* factsheets that could easily be used by insolvency practitioners), and to review them regularly to ensure that they remain accurate and adequate. On July 19, 2011, the FSB issued a public consultation on proposed measures to address systemic risk and moral hazard posed by systemically important financial institutions, which includes proposed measures for improved resolution planning by firms and authorities.[3] The Rule supports and complements these international efforts.

In addition, Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), 12 U.S.C. 5365(d), adopted July 21, 2010, mandates that each covered company periodically submit to the Board of Governors of the Federal Reserve System (''FRB''), the Financial Stability Oversight Council, and the FDIC the plan of such company for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure (''DFA Resolution Plan''). This requirement applies to each nonbank financial company subjected to supervision by the Federal Reserve Board under Title I of the Dodd-Frank Act and each bank holding company with assets of $50 billion or more, including foreign bank holding companies with U.S. financial operations.

The Rule is intended to complement the resolution plan requirements of the Dodd-Frank Act. The Rule requires each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution by the FDIC, as receiver, of such institution under the Federal Deposit Insurance Act (''FDI Act'') in the event of the institution's failure. Currently, with the exception of three thrifts covered by the Rule, holding companies of each insured depository institution covered by the Rule are expected to file a DFA Resolution Plan. While a DFA Resolution Plan will describe the plan to resolve each parent holding company under the Bankruptcy Code, the Rule is focused on planning the resolution of the subsidiary insured depository institution, a resolution that will not be conducted under the Bankruptcy Code, but rather will be conducted under the receivership and liquidation provisions of the FDI Act.[4] The Rule sets forth the elements that are expected to be included in an insured depository institution's Resolution Plan. The requirements for DFA Resolution Plans are provided in FRB and FDIC regulations relating thereto (''Section 165(d) rule'').[5]

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the Rule. The FDIC's roles as insurer and receiver require a distinct focus on potential loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the Deposit Insurance Fund and the ability of the FDIC to conduct an orderly resolution. The authority to issue the Rule is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a) Tenth, which authorizes the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or enforcing. The FDIC also has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act. 12 U.S.C. 1821(d)(1). Collection of the information required by the Rule is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the insured depository institution, including special examinations, 12 U.S.C 1820(b)(3).

II. Interim Final Rule: Summary of Comments

The FDIC originally proposed the resolution plan rule through a Notice of Proposed Rulemaking (''NPR'') published in the **Federal Register** on May 17, 2010.[6] The NPR solicited public comment on all aspects of the NPR. The comment period ended on July 16, 2010, and eight comments were received. On September 21, 2011, the

[2] See ''Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability'' Reports of the Financial Stability Board to G20 Finance Ministers and Central Bank Governors dated February 15, 2011, and April 10, 2011.

[3] See Financial Stability Board, ''Consultative Document: Effective Resolution of Systemically Important Financial Institutions—Recommendations and Timelines,'' 17 (July 19, 2011), available at *http://www.financialstabilityboard.org/publications/r_110719.pdf* (''An adequate, credible [recovery and resolution plan] should be required for any firm that is assessed by its home authority to have a potential impact on financial stability.'') Annex 5 of the Consultative Document sets out a comprehensive proposed framework and content for such plans.

[4] Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

[5] See FRB and FDIC Final Rule: Resolution Plans Required, 76 FR 67323 (November 1, 2011).

[6] 75 FR 27464, entitled '' Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Depository Institutions'' (the ''Proposed Rule'').

FDIC caused to be published in the **Federal Register** an Interim Final Rule (the ''IFR'').[7] The FDIC invited public comment on all aspects of the IFR and posed specific questions to the public regarding the scope of coverage, definitions of terms used in the IFR, strategic analysis, governance, informational elements and process. The comment period ended on November 21, 2011.

The FDIC received seven comment letters from individuals and banking organizations, as well as industry and trade groups representing the banking, insurance and financial services industry. Six of these comments specifically address provisions of the IFR. The comment letters generally expressed support for the broader goals of the IFR to require CIDIs to provide the FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures, and to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved under the FDI Act in an orderly and timely manner in the event of receivership. Some comment letters expressed concern that the IFR did not conform closely enough with the Section 165(d) rule, and others suggested that the Rule more specifically describe certain information that a CIDI must provide. By and large, the comments received fit within several of the categories of questions posed by the FDIC to the public in the IFR. One comment addressed the FDIC's burden estimate. These comments are summarized below.

Scope

The IFR requires each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. The $50 billion in asset threshold was an increase from the $10 billion in asset threshold proposed in the NPR although the NPR also required the CIDI to be owned by a holding company with $100 billion or more in assets. One commenter agreed that only insured depository institutions with $50 billion or more in assets should be subject to the Rule while those insured depository institutions with less than $50 billion in assets should not be because their holding company structures and affiliate relationships are simple enough that they would not impede resolution under the FDI Act.

Another commenter advocated a coverage threshold using the aggregate assets of all consolidating and non-consolidating entities in the holding company group in order to mitigate the risk that assets are allocated among smaller entities to avoid being subject to the Rule. This commenter suggested that an insured depository institution should be covered if the group's aggregate assets exceed $50 billion.

One commenter was critical of the inclusion of savings association subsidiaries of savings and loan holding companies because savings associations typically focus on consumer and retail lending rather than commercial banking and do not present the complexity and the kind of threat to the deposit insurance fund or financial system that the Rule attempts to address. This commenter suggests that the rule should be imposed only on savings associations in financial distress, if other factors present a threat to the deposit insurance fund or the economy, or if the parent company has been designated as a systemically important financial institution by the Financial Stability Oversight Council; or, alternatively, only if the savings association is over $50 billion and receives a CAMELS rating of 3 or worse or its parent receives an equivalent low rating. Additionally, this commenter suggests that the FDIC modify the Rule in a manner that would base a subsidiary insured depository institution's duty to file a Resolution Plan upon the requirement that the subsidiary's parent financial company file a DFA Resolution Plan.

Strategic Analysis

With respect to strategic analysis, one commenter suggested that the FDIC consider a recapitalization of a CIDI as an alternative to traditional resolution methods, believing that such a strategy would be more effective during financial panic than would be a liquidation of assets or sale to a third party pursuant to a traditional purchase and assumption agreement. The same commenter recommended eliminating the requirement that the CIDI demonstrate the resolution strategy as ''least-costly'' because only the FDIC can make such a determination and it does not have to be made until failure. Further, according to this commenter, a requirement that the CIDI demonstrate that the strategy is least costly dissuades the CIDI from considering other resolution strategies as only one strategy could be ''least-cost.''

The IFR requires that a Resolution Plan provide a detailed description of the processes the CIDI employs for assessing the feasibility of the plan under idiosyncratic and industry-wide stress scenarios. One commenter requests clarification of this terminology in light of the requirement that the Resolution Plan strategies should take into account that the failure of the CIDI may occur under baseline, adverse and severely adverse economic conditions. This commenter believes that the Rule's reference to ''idiosyncratic and industry-wide stress scenarios'' be deleted to avoid internal inconsistency and to better harmonize the relevant provisions of the Rule.

Another commenter suggests that the Rule take into account the differences among organizations and the range of strategies that each may consider. This commenter requests that less complex institutions be given the ability to submit streamlined Resolution Plans tailored to nature and risk profile of the CIDI.

The IFR allows a CIDI to submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. One commenter believes that the FDIC should not allow a CIDI to submit its initial Resolution Plan assuming the baseline conditions only and recommends that CIDIs be required to assume adverse and severely adverse economic conditions for their initial Resolution Plans in order to increase confidence in, and the integrity of, the resolution planning process.

One commenter recommends adopting language directing CIDIs to identify and discuss ''potential barriers to effective resolution and actions to mitigate these'' in order to conform to the FSB's key attributes of effective resolution regimes for financial institutions.

Governance

One commenter suggests that the Rule clearly permit a committee, rather than a single ''senior management official,'' to be responsible for development, maintenance, implementation and filing of the Resolution Plan. This commenter suggests that the Rule clarify that it would be appropriate for the CIDI to divide such responsibilities among multiple senior management officials or assign them to a committee, and points out that the Section 165(d) rule recognizes that the responsibility need not be vested in an individual by referring to ''senior management official(s)'' responsible for resolution planning.

[7] 76 FR 58379.

Informational Elements

The IFR sets forth a number of informational elements that a CIDI should include in its plan. One commenter notes that the IFR required a description of material effects that any material event may have on the Resolution Plan and summary of changes that are required to the Resolution Plan, whereas the Section 165(d) rule only requires an explanation of why the event may require changes. This commenter recommends that the FDIC not require more detailed information with the notice of material events than would be required under the Section 165(d) rule.

The IFR requires identification in the Resolution Plan of each payment, clearing and settlement system of which a CIDI is a member. A commenter suggests that the Rule require identification of ''material'' payment, clearing and settlement systems, and recommends that the Rule be conformed to the Section 165(d) rule, which limits disclosure to systems on which a covered company conducts a material number or value amount of trades or transactions.

The same commenter recommends that the Rule qualify the common or shared personnel, facilities, or systems requirements so that the Resolution Plan only need identify ''key'' common or shared personnel, facilities, or systems. This commenter argues that, without a qualifier, the Rule would require exhaustive lists of personnel and systems that would be of little practical use to the FDIC. The commenter points out the limitation of the scope of a parallel informational requirement in the Section 165(d) rule, which requires identification of interconnections and interdependencies that, if disrupted, would materially affect funding or operations.

This commenter also requests that the requirement to describe non-U.S. components of the CIDI's structure and operations be limited to material or key components because it believes it would be more useful to focus on the assets, operations, interrelationships and exposures that are material to the resolution of the CIDI.

Another commenter thought that the IFR overlooks contingent liabilities for correspondent banking and unfunded lending commitments to government subdivisions and social service agencies. This commenter believes that these entities would suffer if CIDI fails and the receiver repudiates its funding obligation, and such action could lead to public panic or distrust in the event that the agency is unable to find another source of liquidity. This commenter suggests that the reporting of unfunded commitments would enable FDIC to develop an action plan to mitigate the adverse effects resulting from the cessation of funding.

Process

The IFR requires a CIDI to demonstrate its capability to promptly produce the information and data underlying its plan in a format acceptable to the FDIC. One commenter believes that this requirement would be better addressed through the FDIC's ongoing review of Resolution Plans than through a rule-based requirement, and points out how the Section 165(d) rule eliminated a similar data-production requirement in favor of a supervisory approach. This commenter also states that informational requirements are being developed and data capabilities are evolving, and such improvement and evolution should be part of the supervisory process.

One commenter points out several date discrepancies between the IFR and the Section 165(d) rule. First, there is a difference in effective dates between the IFR, which is effective on January 1, 2012, and the Section 165(d) rule, which is effective on November 30, 2011. The commenter believes that the measurement date should be the same to ensure that any company subject to the Section 165(d) rule and any of its subsidiary insured depository institutions subject to the Rule will have the same initial and subsequent Resolution Plan submission dates. A change in size during the gap between effective dates could result in Resolution Plans under the two rules being due on different dates. Second, there is a discrepancy between the plan submission dates for an insured depository institution that becomes subject to the IFR after its effective date and a company that becomes subject to the Section 165(d) rule after its effective date. Under the Section 165(d) rule, a company that becomes covered after the effective date must submit its initial plan by July 1 of the following year, provided that July 1 of the following year is at least 270 days after the date on which the company becomes covered. Under the IFR, an insured depository institution that that becomes covered after the effective date must submit its initial plan by July 1 of the following year, without any proviso ensuring that the CIDI have 270 days from the date it becomes covered to submit its plan. The commenter urges the FDIC to add a similar proviso to the Rule to ensure consistency between the rules and to avoid the potential for different submission dates for a company subject to the Section 165(d) rule and its CIDI subsidiary. Third, it is possible that an insured depository institution that becomes a CIDI after the effective date could have a different initial submission date than if it had been covered as of the effective date because it would presumably have to file on July 1 of the following year, rather than in accordance with the staggered schedule. The commenter suggests that the FDIC use its discretionary authority to permit a new CIDI additional time to submit its initial plan in these circumstances to avoid differential treatment of similarly situated insured depository institutions.

One commenter points out that, under both the IFR and the Section 165(d) rule, CIDIs and covered companies are required to file a notice within 45 days of any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan. The Section 165(d) rule provides that such notice is not required if the date by which the notice must be submitted is within 90 days of the annual Resolution Plan submission date, while the IFR only provides a 45-day window. The commenter requests that the two requirements be conformed.

A commenter suggests the Rule provide that the FDIC will consult with the appropriate federal banking agency for the CIDI and its parent company before determining that a Resolution Plan is not credible. This commenter also suggests that the Rule provide that the FDIC will consult with the appropriate foreign supervisors, including the relevant home-country supervisor for the foreign-based parent of the CIDI, before issuing any notice of deficiencies, imposing any requirements or restrictions, or taking any other similar remedial action.

One commenter states that, in determining whether a Resolution Plan is credible, the FDIC should consider whether the resolution strategy envisions breaking the entity into subcomponents for sale. This commenter believes that any Resolution Plan that excludes breakup as an option only perpetuates the risk that the Rule intends to mitigate.

Burden

One commenter states that the burden on CIDIs whose parent company is not required to file a Resolution Plan under the Section 165(d) rule could be significant and likely exceeds the FDIC's published estimate. Although this commenter does not provide a specific

burden estimate, it anticipates that the resources required to produce a Resolution Plan is several times the FDIC's 7,200 hours estimate. The commenter believes the FDIC's estimate may be accurate for CIDIs, whose parent is filing a DFA Resolution Plan, but it does not account for the additional burden on savings associations whose parent would not be filing a DFA Resolution Plan.

The FDIC has carefully considered the comments and has made appropriate revisions to the Rule as described below.

III. Section-by-Section Analysis of Rule

Definitions. Section 360.10(b) defines certain terms, including ''core business lines,'' ''critical services,'' ''covered insured depository institution,'' ''parent company,'' ''parent company affiliate'' and ''material entity,'' which are key definitions in the Rule.

''Core business lines'' means those business lines of the CIDI, including associated operations, services, functions and support that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value. The core business lines of the CIDI are valuable assets of the CIDI. The Resolution Plan should provide a strategy for the sale of the core business lines. The Section 165(d) rule contains a similar definition but, for the Section 165(d) rule the core business lines are determined from the perspective of the covered company rather than the CIDI. For example, the CIDI may be providing services to its holding company, such as payment services, that support a business line of its holding company, such as a brokerage service, that is not a core business line of the CIDI. In such example, payment services may be identified as a core business line of the CIDI, while its holding company identifies brokerage services as a business line in its DFA Resolution Plan.

''Covered insured depository institution'' means an insured depository institution with $50 billion or more in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution. Although several commenters requested changes in the scope of insured depository institutions covered by the Rule, after consideration of those comments, the Rule has not been amended. The FDIC needs the information required by the Rule before an institution is in financial distress. The purpose of the Rule is to enable the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails. History instructs us that the financial condition of a large institution can deteriorate rapidly, and such deterioration is exacerbated in illiquid markets. Additionally, requiring all insured depository institutions of significant size to focus on resolution planning will focus attention on hidden or nascent deficiencies that healthy institutions may have.

''Critical Services'' means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operation of the CIDI. The Resolution Plan should provide for the continuation and funding of critical services. For clarity and to avoid confusion, the term ''critical services'' differs substantially from the term ''critical operations'' as used in the Section 165(d) rule. The term ''critical operations'' is used to designate operations of a covered company the discontinuation of which would pose a threat to the financial stability of the United States. In contrast, the term ''critical services'' is used in the Rule to mean those functions that must be kept operational during the resolution process to allow the receiver to conduct the resolution in an orderly and efficient manner.

''Parent company'' means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, *parent company* means the top-tier of the multi-tiered holding company only.

''Parent company affiliate'' means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI. The term is used in identifying the exposures or reliance that the CIDI has on entities in its affiliated group that are not owned or otherwise controlled by the CIDI. In a multi-tier holding company structure, the term includes all holding companies of the CIDI (except the top-tier holding company) and their affiliates (other than the top-tier holding company, the CIDI and subsidiaries of the CIDI).

''Material entity'' means a company that is significant to the activities of a critical service or core business line. For example, the legal entity utilized by the CIDI as the contracting entity for a core business line would be a material entity. Also, a subsidiary of the CIDI that provides a critical service would be a material entity.

Resolution Plans to be submitted by the CIDI to the FDIC. Pursuant to Section 360.10(c), the initial filings will be staggered to correspond to the schedule of filings by parent companies under the Section 165(d) rule. This schedule also allows the FDIC to focus on the most complex or largest institutions first. In response to comments on the IFR, the date for calculating total nonbank assets in the Rule has been change to November 30, 2011. The Rule requires the first filing group, which consists of each CIDI whose parent company, as of November 30, 2011, had $250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), to file their initial Resolution Plans on July 1, 2012. The Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of November 30, 2011, had $100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Rule requires the third filing group, which consists of the remaining CIDIs, to file their initial Resolution Plans on or before December 31, 2013. The Rule also provides that, on a case-by-case basis, the FDIC may extend, upon request, the implementation and updating time frames of the Rule.

After the initial Resolution Plan is submitted, each CIDI is required to submit a new Resolution Plan annually on or before the anniversary date of the date for the submission of its initial plan.

With respect to an insured depository institution that becomes a CIDI after the effective date of the Rule and in response to comments, the Rule was revised to coincide with the Section 165(d) rule's filing requirement for such an institution's parent. The Rule provides that an insured depository institution that becomes a CIDI after the effective date of the Rule shall submit its initial Resolution Plan no later than the next July 1 following the date the insured depository institution becomes a CIDI, provided such date occurs no earlier than 270 days after the date on which the insured depository institution became a CIDI.

A CIDI is required to file a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or change which results in, or could reasonably be foreseen to

have, a material effect on the Resolution Plan of the CIDI. The FDIC desires a notice only when an event results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI such that the Resolution Plan would be ineffective or require material amendment to be effective. A notice is not required if an event does not result in, or could not reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI. In regard to what constitutes a material effect on the Resolution Plan, the effect on the Resolution Plan should be of such significance as to render the Resolution Plan ineffective, in whole or in part, until an update is made to the plan. A notice should describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. One commenter noted that the IFR provision regarding notice of material event varied from the similar provision in the Section 165(d) rule and requested that the Rule be modified to be consistent with the Section 165(d) rule. The Rule has been modified to be consistent with the Section 165(d) rule with respect to both the content of the notice and the exception, *i.e.,* under the Rule, a CIDI is not required to file a notice of material event within 90 days prior to the date on which it is required to file its annual resolution plan.

Incorporation of data and other information from a Dodd-Frank Act resolution plan. The CIDI may incorporate data and other information from a DFA Resolution Plan filed by its parent company.

Content of the Resolution Plan. Section 360.10(c)(2) requires each CIDI to submit a Resolution Plan that should enable the FDIC to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823, and specifies the minimum content of the Resolution Plan. The Resolution Plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the FRB pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. While one commenter suggested that a CIDI's first iteration of a Resolution Plan should assume a baseline, adverse and severely adverse economic conditions, the FDIC recognizes the burden that the Rule imposes on CIDIs and the challenge that CIDIs face in preparing their initial Resolution Plans. To reduce this burden, the FDIC is requiring that feasibility for initial Resolution Plans be assessed under only baseline economic condition scenarios. Subsequent Resolution Plans must assess feasibility under adverse and severely adverse economic condition scenarios as well.

The Resolution Plan should include an executive summary that summarizes the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual Resolution Plan should also describe material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan, material changes to the CIDI's Resolution Plan from its most recently filed plan, and any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its Resolution Plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the Resolution Plan.

The Resolution Plan should provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. A mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities should be provided that identifies which legal entities are utilized in the conduct of such business line. The Resolution Plan should include a discussion of the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC or result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization should be identified.

The Resolution Plan should identify critical services and providers of critical services. A mapping of critical services to material entities and core business lines should be provided that identifies which legal entities are providing the critical services and which business lines are utilizing the critical services. The Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, the Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. The ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure should be assessed.

The Resolution Plan should identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI. One commenter suggested that the Rule require the CIDI to identify potential barriers or other obstacles to an orderly resolution of the CIDI. The Rule now provides that the CIDI identify potential barriers or other material obstacles to an orderly resolution of the CIDI, interconnections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

The Resolution Plan should provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The Resolution Plan should also describe remediation or mitigating steps that can be taken to eliminate or mitigate obstacles to such separation.

The Resolution Plan should provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases. The Resolution Plan should also describe how the strategies for the separation of the CIDI and its subsidiaries from its

parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI as required by Section 13(c)(4)(A) of the FDI Act, 12 U.S.C. 1823(c)(4)(A). One commenter suggested that the Rule should not require the CIDI to demonstrate a strategy is least costly *ex ante.* The Rules requires the CIDI to propose reasonable resolution options and demonstrate how one is least costly relative to liquidation or other resolution methods. A CIDI can demonstrate a selected strategy is least costly by offering a range of transactions and be ensuring that the transactions are offered broadly to the market, competitive bids are taken and bids are evaluated carefully. The CIDI can apply those strategies, or others it may develop, for demonstrating that the option ultimately selected will be least costly.

Among potential strategies for the payment of depositors that should be considered are: (a) A cash payment of insured deposits,[8] (b) a purchase and assumption transaction with an insured depository institution to assume insured deposits, (c) a purchase and assumption transaction with an insured depository institution to assume all deposits, (d) a purchase and assumption transaction with multiple insured depository institutions in which branches are broken up and sold separately in order to maximize franchise value, and (e) transfer of insured deposits to a bridge institution chartered to assume such deposits, as an interim step prior to the purchase of the deposit franchise and assumption of such deposits by one or more insured depository institutions.[9]

Among potential strategies for the sale of core business lines and assets that should be considered are: (a) Retention of some or all of the assets in receivership, to be marketed broadly to eligible purchasers, including insured depository institutions as well as other interested purchasers, (b) sale of all or a portion of the core business lines and assets in a purchase and assumption agreement, to one or more insured depository institutions, and (c) transfer of all or a portion of the core business lines and assets to a bridge institution chartered to continue operating the core business lines and service the assets transferred to it, as an interim step prior to the sale of such core business lines and assets through appropriate marketing strategies.[10]

In developing a resolution strategy, each CIDI may utilize one or more of the methods described above, but is not limited to these methods. As suggested by one commenter, a CIDI may consider a post-appointment recapitalization in its Resolution Plan and a CIDI should address this option if it believes a recapitalization would be among the resolution options that are least costly to the deposit insurance fund. Another commenter suggested a breakup of an institution should also be considered. A breakup is a legitimate resolution method and a CIDI may consider that as a resolution option. The resolution strategy should be tailored to the size, complexity and risk profile of the institution.

In addition to the strategic analyses described above, the Resolution Plan should provide a detailed description of the processes the CIDI employs for determining the current market values and marketability of core business lines and material asset holdings, assessing the feasibility of the CIDI's plans, under baseline, adverse and severely adverse economic condition scenarios for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the Resolution Plan, and assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines. This information will allow the FDIC to understand the basis for the valuations included in the Resolution Plan and to consider how those processes could be utilized in a resolution.

Major counterparties should be identified. The CIDI should describe the interconnections, interdependencies and relationships with such major counterparties and analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI. The Resolution Plan should describe any material off-balance-sheet exposures (including unfunded commitments, guarantees and contractual obligations) of the CIDI and those exposures should be mapped to core business lines.

The Resolution Plan should identify and describe processes used by the CIDI to determine to whom the CIDI has pledged collateral, identify the person or entity that holds such collateral, and identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

The Resolution Plan should describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Each system on which the CIDI conducts a material number or value amount of trades should be identified. Each trading system should be mapped to the CIDI's legal entities and core business lines. The Resolution Plan should identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Hedging strategies of the CIDI should be described.

An unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI should be provided. Amounts attributed to entities that are not material may be aggregated on the consolidating schedule. Financial statements for material entities should be provided. When available, audited financial statements should be provided.

The Resolution Plan should identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Membership in each such system should be mapped to the CIDI's legal entities and core business lines. Systems that are immaterial in resolution planning, such as a local check clearing house, do not need to be identified.

The Resolution Plan should provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which should be mapped to core business lines and critical services. The Resolution Plan should also describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to

[8] This task could be accomplished through the exercise of FDIC's authority to temporarily operate a new depository institution under Section 11(m) of the FDI Act, 12 U.S.C. 1821(m).

[9] A bridge depository institution is a new, temporary, full-service insured depository institution controlled by the FDIC. It is designed to ''bridge'' the gap between the failure of an insured depository institution and the time when the FDIC can implement a satisfactory acquisition by a third party. Section 11(n) of the FDI Act, 12 U.S.C. 1821(n).

[10] One significant benefit of using the bridge depository institution relates to qualified financial contracts. Qualified financial contracts are not subject to either the ipso facto rule or the 90-day stay on enforcement of contracts in default. However, the FDI Act precludes a counterparty from terminating a qualified financial contract solely by reason of the appointment of a receiver for a insured depository institution (a) until 5 p.m. (Eastern time) on the business day following the date of appointment; or (b) after the counterparty has received notice that the contract has been transferred to a solvent financial institution, including a bridge insured depository institution.

maturity, secured and unsecured liabilities and subordinated liabilities.

The Resolution Plan should describe any material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI and any of its subsidiaries have with its parent or any parent company affiliate. All material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions should be described. The description should clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

The Resolution Plan should describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy should be discussed.

The Resolution Plan should describe material components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Details should be provided on the location and amount of foreign deposits and assets. The Resolution Plan should discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures which should be mapped to legal entities and core business lines.

The Resolution Plan should provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. The legal owner or licensor of the systems should be identified. The use and function of the system or application should be described. A listing of service level agreements and any software and systems licenses or associated intellectual property related thereto should be provided. Any disaster recovery or other backup plans should be identified and described. The Resolution Plan should identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems. Personnel may be identified by a department name or other identifier (for example, the accounting department personnel) when the names of such personnel are retrievable, upon request, using such identifier. The Resolution Plan should also describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the Resolution Plan to management of the CIDI and, upon request to the FDIC. Furthermore, the Resolution Plan should describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

The Resolution Plan should include a detailed description of how resolution planning is integrated into the corporate governance structure and processes of the CIDI, the CIDI's policies, procedures, and internal controls governing preparation and approval of the Resolution Plan, and the identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section. One commenter suggested that the Rule be modified to make clear that it would be appropriate if a CIDI were to divide responsibilities among multiple senior management officials or assign them to a committee. While it may be appropriate to divide up the responsibilities, to assure appropriate oversight, the primary responsibility and accountability for the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section should be assigned to one senior management official.

The Resolution Plan should describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed Resolution Plan to assess the viability of or improve the Resolution Plan.

The Resolution Plan should identify and discuss any other material factor that may impede the resolution of the CIDI.

Approval by CIDI's Board of Directors. The CIDI's board of directors must approve the Resolution Plan. Such approval shall be noted in the Board minutes.

Review of Resolution Plan. The FDIC desires to work closely with CIDIs in the development of their Resolution Plans and is dedicating staff for that purpose. The FDIC expects the review process to evolve as CIDIs gain more experience in preparing their Resolution Plans. The FDIC recognizes that plans will vary by institution and, in their evaluation of plans, will take into account variances among institutions in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Each Resolution Plan, however, must be credible. A Resolution Plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

Because each Resolution Plan is expected to be unique, the FDIC encourages CIDIs to ask questions and, if so desired, to arrange a meeting with the FDIC. The FDIC expects the initial Resolution Plan will provide the foundation for developing more robust annual Resolution Plans.

After receiving a Resolution Plan, the FDIC will determine whether the submitted plan satisfies the minimum informational requirements of this section. If the FDIC determines that a Resolution Plan is informationally incomplete or that additional information is necessary to facilitate review of the Resolution Plan, the FDIC will return the Resolution Plan to the CIDI and inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required. The CIDI must resubmit an informationally complete Resolution Plan or such additional information as requested to facilitate review of the Resolution Plan no later than 30 days after receiving the notice described in preceding sentence, or such other time period as the FDIC may determine.

Upon acceptance of a Resolution Plan as complete, the FDIC will review the Resolution Plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the Resolution Plan of a CIDI submitted is not credible,

the FDIC will notify the CIDI in writing of such determination. Any notice provided under this paragraph will identify the aspects of the Resolution Plan that the FDIC determines to be deficient.

Within 90 days of receiving a notice of deficiencies issued pursuant to the preceding paragraph, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised Resolution Plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

Upon a written request by a CIDI, the FDIC may extend any time period under the Rule. Each extension request shall be in writing and describe the basis and justification for the request.

Implementation Matters. In order to allow evaluation of the Resolution Plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the Resolution Plan and the ability of the CIDI to implement the Resolution Plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

The CIDI's ability to produce the information and data underlying its resolution rapidly and on demand is a vital element in a credible Resolution Plan. While one commenter believes that this requirement would be better addressed through the FDIC's ongoing review of Resolution Plans than through a rule-based requirement, without up-to-date information on the CIDI, the FDIC, as receiver, would be hampered in implementing the Resolution Plan. Therefore, within a reasonable period of time, as determined by the FDIC, after the filing of its initial Resolution Plan, the CIDI must demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, accurate and verifiable data underlying the key aspects of Resolution Plan. The FDIC understands that the capability to produce the data underlying the key aspects of the Resolution Plan will vary by CIDI and, therefore, intends to review and discuss the CIDI's plans to remedy deficiencies as part of their review of a CIDI's initial Resolution Plan. In addition, the Rule has been modified to require the FDIC shall consult with the appropriate Federal banking agency for the CIDI before any finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.

Notwithstanding the general requirements of this section, on a case-by-case basis, the FDIC may extend, upon notice, the implementation and updating time frames for all or part of the requirements of this section. The FDIC may also, upon application of a CIDI, exempt a CIDI from one or more of the requirements of this section.

No limiting effect on the FDIC as receiver. No Resolution Plan provided pursuant to the Rule shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

Confidentiality of Information Submitted Pursuant to this Section. Several commenters requested that the Resolution Plans be treated as exempt from disclosure under the Freedom of Information Act (''FOIA''). The FDIC is aware of and sensitive to the significant concerns regarding confidentiality of Resolution Plans. The Rule contemplates and requires the submission of highly detailed, internal proprietary information of CIDIs. This is the type of information that CIDIs would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. In the FDIC's view, release of this information would impede the quality and extent of information provided by CIDIs and could significantly impact the FDIC's efforts to encourage effective and orderly resolution of the CIDIs in a crisis.

Under the Rule, the confidentiality of Resolution Plans is to be assessed in accordance with the applicable exemptions under the FOIA, 5 U.S.C. 552(b), and the FDIC's Disclosure of Information Rule, 12 CFR part 309. The FDIC certainly expects that large portions of the submissions will contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and information that is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. 552(b)(4) and (8).

The FDIC also recognizes, however, that the regulation calls for the submission of details regarding CIDIs that are publicly available or otherwise are not sensitive and should be made public. Unless inextricably intertwined with exempt information, these details would be releasable under the FOIA. The FDIC is concerned that it and the courts could reach inconsistent conclusions regarding which portions of the Resolution Plans contain or consist of reasonably segregable nonexempt information. This uncertainty, in turn, could impact the quality and content of the information provided by CIDIs.

In order to reduce this uncertainty, the Rule requires Resolution Plans to be divided into two sections: a public section and a confidential section. The Rule further specifies the scope and content of the information that is to comprise each section. In the FDIC's view, the details required to be contained in the public section are or should be publicly available. The public section of the Resolution Plan should be segregated and separately identified from the confidential section. The public section will be made available to the public in accordance with the FDIC's Disclosure of Information Rule, 12 CFR part 309.

The confidential section of a Resolution Plan should contain and consist of information that is subject to withholding under one or more of the FOIA exemptions. A CIDI should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the FDIC will have to make formal exemption and segregability determinations if and when a plan is requested under the FOIA.

The public section of the Resolution Plan consists of an executive summary of the Resolution Plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI: (i) The names of material entities; (ii) a description of core business lines; (iii) consolidated financial information regarding assets, liabilities, capital and major funding sources; (iv) a description of derivative activities and hedging activities; (v) a list of memberships in material payment, clearing and settlement systems; (vi) a description of foreign operations; (vii) the identities of material supervisory authorities; (viii) the identities of the principal officers; (ix) a description of the corporate governance structure and processes related to resolution planning; (x) a description of material management information systems; and (xi) a description, at a high level, of the CIDI's resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (''PRA''), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

Title: Resolution plans required for insured depository institutions with $50 billion or more in total assets.

OMB Number: 3064—New Collection.

Affected Public: Insured depository institutions with $50 billion or more in total assets.

A. Estimated Number of Respondents for Contingent Resolution Plan: 37.

Frequency of Response: Once.

Estimated Time per Response: 7,200 hours per respondent.

Estimated Total Initial Burden: 266,400 hours.

B. Estimated Number of Respondents for Annual Update of Resolution Plan: 37.

Frequency of Response: Annual.

Estimated Time per Response: 452 hours per respondent.

Estimated Total Initial Burden: 16,724 hours.

C. Estimated Number of Respondents for Notice of Material Change affecting Resolution Plan: 37.

Frequency of Response: Zero to two times annually.

Estimated Time per Response: 226 hours per respondent.

Estimated Total Initial Burden: 8,362 hours.

Background/General Description of Collection: Section 360.10 contains collections of information pursuant to the PRA. In particular, the following requirements of the Rule constitute collections of information as defined by the PRA: all CIDIs are required to submit to the FDIC a Resolution Plan that contains certain required information and meets certain described standards; updates to the analysis and plan are required to be submitted annually, with certain notices to be filed more frequently as a result of material changes. The collections of information contained in the Rule are being submitted to OMB for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* (RFA) requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[11] 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.[12] Therefore, insured depository institutions with assets sizes of $175 million or less are considered small entities for purposes of the RFA.

The Rule would apply only to insured depository institutions with $50 billion or more in total assets. The Rule would apply to 37 insured depository institutions upon its effective date. Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Rule will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis under the RFA is not required.

VI. Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Rule in a simple and straightforward manner.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Rule may be reviewed.

IX. Riegle Community Development and Regulatory Improvement Act

Section 302 of Riegle Community Development and Regulatory Improvement Act (RCDRIA)[13] generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The effective date of the Rule is April 1, 2012, which is the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, as required by RCDRIA.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and record keeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends Part 360 of title 12 of the Code of Federal Regulations as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Revise § 360.10 to read as follows:

§ 360.10 Resolution plans required for insured depository institutions with $50 billion or more in total assets.

(a) *Scope and purpose.* This section requires each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. This section also establishes the rules and requirements regarding the submission and content of a resolution plan as well as procedures for review by the FDIC of a resolution plan. This section requires a covered insured depository institution to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the

[11] See 5 U.S.C. 603, 604 and 605.

[12] 13 CFR 121.201.

[13] 12 U.S.C. 4802.

institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution. This rule is intended to ensure that the FDIC has access to all of the material information it needs to resolve efficiently a covered insured depository institution in the event of its failure.

(b) *Definitions*—(1) *Affiliate* has the same meaning given such term in Section 3(w)(6) of the FDI Act, 12 U.S.C. 1813(w)(6).

(2) *Company* has the same meaning given such term in § 362.2(d) of the FDIC's Regulations, 12 CFR 362.2(d).

(3) *Core business lines* means those business lines of the covered insured depository institution (''CIDI''), including associated operations, services, functions and support, that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value.

(4) *Covered insured depository institution (''CIDI'')* means an insured depository institution with $50 billion or more in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution.

(5) *Critical services* means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operations of the CIDI.

(6) *Foreign-based company* means any company that is not incorporated or organized under the laws of the United States.

(7) *Insured depository institution* shall have the meaning given such term in Section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

(8) *Material entity* means a company that is significant to the activities of a critical service or core business line.

(9) *Parent company* means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, *parent company* means the top-tier of the multi-tiered holding company only.

(10) *Parent company affiliate* means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI.

(11) *Resolution plan* means the plan described in paragraph (c) of this section for resolving the CIDI under Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

(12) *Subsidiary* has the same meaning given such term in Section 3(w)(4) of the FDI Act, 12 U.S.C. 1813(w)(4).

(13) *Total assets* are defined in the instructions for the filing of Reports of Condition and Income and Thrift Financial Reports, as applicable to the insured depository institution, for determining whether it qualifies as a CIDI.

(14) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa and the Virgin Islands.

(c) *Resolution Plans to be submitted by CIDI to FDIC.*

(1) *General.* (i) *Initial Resolution Plans Required.* Each CIDI shall submit a resolution plan to the FDIC, Attention: Office of Complex Financial Institutions, 550 17th Street NW., Washington, DC 20429, on or before the date set forth below (''Initial Submission Date''):

(A) July 1, 2012, with respect to a CIDI whose parent company, as of November 30, 2011, had $250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets);

(B) July 1, 2013, with respect to any CIDI not described paragraph (c)(1)(i)(A) of this section whose parent company, as of November 30, 2011, had $100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets); and

(C) December 31, 2013, with respect to any CIDI not described in of this paragraph (c)(1)(i)(A) or (B) of this section.

(ii) *Submission by New CIDIs.* An insured depository institution that becomes a CIDI after April 1, 2012 shall submit its initial resolution plan no later than the next July 1 following the date the insured depository institution becomes a CIDI, provided such date occurs no earlier than 270 days after the date on which the insured depository institution became a CIDI.

(iii) After filing its initial Resolution Plan pursuant to paragraph (c)(1)(i) or (c)(1)(ii) of this section, each CIDI shall submit a Resolution Plan to the FDIC annually on or before each anniversary date of its Initial Submission Date.

(iv) Notwithstanding anything to the contrary in this paragraph (c)(1), the FDIC may determine that a CIDI shall file its initial or annual Resolution Plan by a date other than as provided in this paragraph (c). The FDIC shall provide a CIDI with written notice of a determination under this paragraph (c)(1)(iv) no later than 180 days prior to the date on which the FDIC determines to require the CIDI to submit its Resolution Plan.

(v) *Notice of Material Events.* (A) Each CIDI shall file with the FDIC a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI. Such notice shall describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. The CIDI shall address any event, occurrence or change with respect to which it has provided notice pursuant hereto in the following resolution plan submitted by the CIDI.

(B) A CIDI shall not be required to file a notice under paragraph (c)(1)(v)(A) of this section if the date on which the CIDI would be required to submit a notice under paragraph (c)(1)(v)(A) would be within 90 days prior to the date on which the CIDI is required to file an annual Resolution Plan under paragraph (c)(1)(iii) of this section.

(vi) *Incorporation of data and other information from a Dodd-Frank Act resolution plan.* The CIDI may incorporate data and other information from a resolution plan filed pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365(d), by its parent company.

(2) *Content of the Resolution Plan.* The resolution plan submitted should enable the FDIC, as receiver, to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823. The resolution plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then

available, a reasonable substitute developed by the CIDI. At a minimum, the resolution plan shall:

(i) *Executive Summary.* Include an executive summary describing the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual resolution plan shall also describe:

(A) Material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan;

(B) Material changes to the CIDI's resolution plan from its most recently filed plan; and

(C) Any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the resolution plan.

(ii) *Organizational Structure: Legal Entities; Core Business Lines and Branches.* Provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. Provide a mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities. Discuss the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Identify key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization.

(iii) *Critical Services.* Identify critical services and providers of critical services. Provide a mapping of critical services to material entities and core business lines. Describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. Assess the ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure.

(iv) *Interconnectedness to Parent Company's Organization; Potential Barriers or Material Obstacles to Orderly Resolution.* Identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI. Identify potential barriers or other material obstacles to an orderly resolution of the CIDI, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

(v) *Strategy to Separate from Parent Company's Organization.* Provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. Describe remediation or mitigating steps that could be taken to eliminate or mitigate obstacles to such separation.

(vi) *Strategy for the Sale or Disposition of Deposit Franchise, Business Lines and Assets.* Provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases.

(vii) *Least Costly Resolution Method.* Describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.

(viii) *Asset Valuation and Sales.* Provide a detailed description of the processes the CIDI employs for:

(A) Determining the current market values and marketability of core business lines and material asset holdings;

(B) Assessing the feasibility of the CIDI's plans, under baseline, adverse and severely adverse economic condition scenarios for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the CIDI's resolution plan; and

(C) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines.

(ix) *Major Counterparties.* Identify the major counterparties of the CIDI and describe the interconnections, interdependencies and relationships with such major counterparties. Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI.

(x) *Off-balance-sheet Exposures.* Describe any material off-balance-sheet exposures (including unfunded commitments, guarantees and contractual obligations) of the CIDI and map those exposures to core business lines.

(xi) *Collateral Pledged.* Identify and describe processes used by the CIDI to:

(A) Determine to whom the CIDI has pledged collateral;

(B) Identify the person or entity that holds such collateral; and

(C) Identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

(xii) *Trading, derivatives and hedges.* Describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Identify each system on which the CIDI conducts a material number or value amount of trades. Map each trading system to the CIDI's legal entities and core business lines. Identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Describe hedging strategies of the CIDI.

(xiii) *Unconsolidated Balance Sheet of CIDI; Material Entity Financial Statements.* Provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI. Provide financial statements for material entities. When available, audited financial statements should be provided.

(xiv) *Payment, clearing and settlement systems.* Identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Map membership in each such system to the CIDI's legal entities and core business lines.

(xv) *Capital Structure; Funding Sources.* Provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which shall be mapped to core business lines and critical services. Describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

(xvi) *Affiliate Funding, Transactions, Accounts, Exposures and Concentrations.* Describe material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI or any of its subsidiaries have with its parent or any parent company affiliate. Include in such description material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions. Clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI and its subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

(xvii) *Systemically Important Functions.* Describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Discuss critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

(xviii) *Cross-Border Elements.* Describe material components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. Discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures and map to legal entities and core business lines.

(xix) *Management Information Systems; Software Licenses; Intellectual Property.* Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. Identify the legal owner or licensor of the systems identified above; describe the use and function of the system or application, and provide a listing of service level agreements and any software and systems licenses or associated intellectual property related thereto. Identify and discuss any disaster recovery or other backup plans. Identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems. Describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution plan to management of the CIDI and, upon request to the FDIC. Describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(xx) *Corporate Governance.* Include a detailed description of:

(A) How resolution planning is integrated into the corporate governance structure and processes of the CIDI;

(B) The CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution plan; and

(C) The identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, implementation, and filing of the resolution plan and for the CIDI's compliance with this section.

(xxi) *Assessment of the Resolution Plan.* Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed resolution plan to assess the viability of or improve the resolution plan.

(xxii) *Any other material factor.* Identify and discuss any other material factor that may impede the resolution of the CIDI.

(3) *Approval.* The CIDI's board of directors must approve the resolution plan. Such approval shall be noted in the Board minutes.

(4) *Review of Resolution Plan.*

(i) Each resolution plan submitted shall be credible. A resolution plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

(ii) After receiving a resolution plan, the FDIC shall determine whether the submitted plan satisfies the minimum informational requirements of paragraph (c)(2) of this section; and either acknowledge acceptance of the plan for review or return the resolution plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(iii) If the FDIC determines that a resolution plan is informationally incomplete or that additional information is necessary to facilitate review of the plan, the FDIC shall inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required.

(iv) The CIDI shall resubmit an informationally complete resolution plan or such additional information as requested to facilitate review of the resolution plan no later than 30 days after receiving the notice described in paragraph (c)(4)(iii) of this section, or such other time period as the FDIC may determine.

(v) Upon acceptance of a resolution plan as informationally complete, the FDIC will review the resolution plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the resolution plan of a CIDI submitted is not credible, the FDIC shall notify the CIDI in writing of such determination. Any notice provided under this paragraph shall identify the aspects of the resolution plan that the FDIC determines to be deficient.

(vi) Within 90 days of receiving a notice of deficiencies issued pursuant to the preceding paragraph, or such shorter or longer period as the FDIC may determine, a CIDI shall submit a revised resolution plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

(vii) Upon its own initiative or a written request by a CIDI, the FDIC may extend any time period under this section. Each extension request shall be in writing and shall describe the basis and justification for the request.

(d) *Implementation Matters.* (1) In order to allow evaluation of the resolution plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the

credibility of the resolution plan and the ability of the CIDI to implement the resolution plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(2) Within a reasonable period of time, as determined by the FDIC, following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, the information and data underlying its resolution plan. The FDIC shall consult with the appropriate Federal banking agency for the CIDI before finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.

(3) Notwithstanding the general requirements of paragraph (c)(1) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, the implementation and updating time frames for all or part of the requirements of this section.

(4) FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(e) *No limiting effect on FDIC.* No resolution plan provided pursuant to this section shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

(f) *Form of Resolution Plans; Confidential Treatment of Resolution Plans.* (1) Each resolution plan of a CIDI shall be divided into a Public Section and a Confidential Section. Each CIDI shall segregate and separately identify the Public Section from the Confidential Section. The Public Section shall consist of an executive summary of the resolution plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the CIDI's resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

(2) The confidentiality of resolution plans shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a resolution plan or related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the FDIC's Disclosure of Information Rules (12 CFR part 309) and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(5) To the extent permitted by law, the submission of any nonpublicly available data or information under this section shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

Dated at Washington, DC this 17th day of January, 2012.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–1136 Filed 1–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0599; Directorate Identifier 2011–NE–19–AD; Amendment 39–16922; AD 2012–01–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34–10E series turbofan engines. This AD was prompted by a report of heavy wear found on the seating surface of the center vent duct (CVD) (commonly referred to as center vent tube) support ring and on the inside diameter of the fan drive shaft at the mating location. This AD requires removing from service all CVD support assemblies and any fan drive shaft on the affected engines if wear is found on either the CVD support ring or the fan drive shaft. We are issuing this AD to prevent fan drive shaft failure, leading to uncontained engine failure and damage to the airplane.

DATES: This AD is effective February 27, 2012.

ADDRESSES: For service information identified in this AD, contact GE–Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7756; fax: (781) 238–7199; email: *john.frost@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal**

Register on October 18, 2011 (76 FR 64287). That NPRM proposed to require removing from service all CVD support assemblies and any fan drive shaft on the affected engines if wear is found on either the CVD support ring or the inside diameter of the fan drive shaft.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Include an Engine Serial Number (S/N)

One commenter, Embraer Aircraft Maintenance Services, requests that we include engine S/N 994187 in the applicability. They cite the GE All Operators Wire they received as being accurate with the affected engine S/Ns, which includes S/N 994187.

We agree. We added S/N 994187.

Request To Allow Previous Credit

One commenter, GE, requests that we allow previous credit for engines with records of prior CVD support assembly replacement and fan drive shaft inspection per the Engine Manual, before the effective date of the AD.

We agree that previous credit should be allowed. Paragraph (e) of the AD requires compliance before accumulating 11,500 total cycles-in-service on the engine, unless already done. We did not change the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

We estimate that this AD will affect 71 GE CF34–10E series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 8 work-hours per engine to perform a replacement of the CVD support assembly and visual inspections, and that the average labor rate is $85 per work-hour. A replacement CVD support assembly costs about $3,080. We estimate that two fan drive shafts will fail inspection and require replacement. A replacement fan drive shaft costs about $126,900. We estimate that no additional labor costs would be incurred to perform the required part replacements as the replacements are done at time of scheduled engine shop visit. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $520,760.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–01–10 General Electric Company: Amendment 39–16922; Docket No. FAA–2011–0599; Directorate Identifier 2011–NE–19–AD.

(a) Effective Date

This AD is effective February 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF34–10E series turbofan engines, serial number (S/N) 994116, and S/Ns 994118 through 994187, inclusive.

(d) Unsafe Condition

This AD was prompted by a report of heavy wear found on the seating surface of the center vent duct (CVD) (commonly referred to as center vent tube) support ring and on the inside diameter of the fan drive shaft at the mating location. The wear is caused by relative motion between the CVD support assembly (consisting of self-locking nut, part number (P/N) 2226M57G03, threaded sleeve, P/N 2226M55P03, and support ring, P/N 2226M56P01) and the fan drive shaft, during engine operation. We are issuing this AD to prevent fan drive shaft failure, leading to uncontained engine failure and damage to the airplane.

(e) Compliance

Comply with this AD before accumulating 11,500 total cycles-in-service on the engine, unless already done.

(f) Removal from Service of CVD Support Assembly and Determination of Fan Drive Shaft Serviceability

Visually inspect the seating surface of the CVD support ring for wear.

(1) If there is sign of wear on the CVD support ring, remove the CVD support assembly and the fan drive shaft from service before further flight.

(2) If there is no sign of wear on the CVD support ring, remove the CVD support assembly from service and borescope inspect the inside diameter of the fan drive shaft at the CVD support ring contact area for wear.

(3) If there is sign of wear on the inside diameter of the fan drive shaft, remove the fan drive shaft from service before further flight.

(g) Installation Prohibition

After the effective date of this AD, do not return to service any CVD support assembly (consisting of self-locking nut, P/N 2226M57G03, threaded sleeve, P/N 2226M55P03, and support ring, P/N 2226M56P01) or fan drive shaft removed from service as specified in this AD.

(h) Definition

For the purposes of this AD, the phrase ''sign of wear'' is defined as any visual indication of removal of parent material from the CVD seating surface or the fan drive shaft.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(j) Related Information

(1) For more information about this AD, contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7756; fax: (781) 238–7199; email: *john.frost@faa.gov.*

(2) GE Service Bulletin No. CF34–10E S/B 72–0188, dated April 12, 2011, pertains to the subject of this AD. For service information identified in this AD, contact GE–Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com.*

(3) You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on January 12, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–1132 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1022; Directorate Identifier 2011–NE–20–AD; Amendment 39–16919; AD 2012–01–07]

RIN 2120–AA64

Airworthiness Directives; BRP—POWERTRAIN GMBH & CO KG Rotax Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for BRP—POWERTRAIN GMBH & CO KG Rotax 914 F2, 914 F3, and 914 F4 reciprocating engines. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as isolated manufacturing deviations reportedly found on the threads of a certain batch of fuel pressure regulators, part number (P/N) 887130, installed on Rotax 914 F series engines, which could result in fuel leakage during engine operation. We are issuing this AD to prevent fuel leaks, which could result in an in-flight fire and damage to the aircraft.

DATES: This AD becomes effective February 27, 2012.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *mark.riley@faa.gov;* phone: (781) 238–7758; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2011 (76 FR 59950). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> Isolated manufacturing deviations have been reportedly found on the threads of a certain batch of fuel pressure regulators, Part Number (P/N) 887130, installed on Rotax 914 F series engines.

The corrective action includes replacing fuel pressure regulators listed in Table 1 of this AD with a fuel pressure regulator that is not listed in Table 1 of this AD, and is eligible for installation. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

The European Aviation Safety Agency AD requires replacing the fuel pressure regulator within 100 flight hours (FHs) or 6 months after the effective date of that AD, whichever occurs first. This AD requires replacing the fuel pressure regulator within 100 FHs after the effective date of this AD.

Costs of Compliance

We estimate that this AD will affect about 75 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts cost about $180 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $26,250.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the

Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–01–07 BRP—POWERTRAIN GMBH & CO KG (formerly Bombardier-Rotax GmbH): Amendment 39–16919; Docket No. FAA–2011–1022; Directorate Identifier 2011–NE–20–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BRP—POWERTRAIN GMBH & CO KG Rotax 914 F2, 914 F3, and 914 F4 reciprocating engines with certain fuel pressure regulators, part number (P/N) 887130 installed.

(d) Reason

This AD was prompted by isolated manufacturing deviations reportedly found on the threads of a certain batch of fuel pressure regulators, P/N 887130, installed on Rotax 914 F series engines, which could result in fuel leakage during engine operation. We are issuing this AD to prevent fuel leaks, which could result in an in-flight fire and damage to the aircraft.

(e) Actions and Compliance

Within 100 flight hours (FHs) after the effective date of this AD, replace fuel pressure regulators listed in Table 1 of this AD with a fuel pressure regulator that is not listed in Table 1 of this AD, and is eligible for installation.

(1) After the effective date of this AD, do not install any fuel pressure regulator P/N 887130 onto any engine if the fuel pressure regulator has a serial number (S/N) listed in Table 1 of this AD.

(2) After the effective date of this AD, do not install any Rotax 914 F series engine on any airplane if it has installed in it a fuel pressure regulator P/N 887130 with a S/N listed in Table 1 of this AD.

TABLE 1—S/NS OF AFFECTED FUEL PRESSURE REGULATORS, P/N 887130

100200 through 100246 inclusive.
100248 through 100280 inclusive.
100282 through 100293 inclusive.
100295 through 100314 inclusive.
100316 and 100317.
100319 through 100326 inclusive.
100330.
100332 and 100333.
100338 through 100340 inclusive.
100342 through 100345 inclusive.
100348.
100350 through 100355 inclusive.
100357 through 100363 inclusive.
100365 through 100368 inclusive.
100371 and 100372.
100374 through 100376 inclusive.
100379 and 100380.
100395 and 100396.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) Related Information

(1) Refer to EASA Airworthiness Directive 2011–0082, dated May 10, 2011, for related information.

(2) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *mark.riley@faa.gov;* phone: (781) 238–7758; fax: (781) 238–7199, for more information about this AD.

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on January 11, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–1133 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30823; Amdt. No. 498]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

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

DATES: *Effective Date:* 0901 UTC, February 9, 2012.

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

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

The Rule

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

contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on January 6, 2012.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, February 9, 2012.

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

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

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

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS AMENDMENT 498 EFFECTIVE DATE FEBRUARY 9, 2012

From	To	MEA	MAA
§ 95.10 Amber Federal Airway A1 Is Amended To Read in Part			
Orca Bay, AK NDB *8300–MOCA	Campbell Lake, AK NDB		*9000
§ 95.3000 Low Altitude RNAV Routes **§ 95.3223 RNAV Route T223 Is Amended To Read in Part**			
Nonda, AK FIX *10000—MCA Bluga, AK FIX, SW BND **11800—MOCA	*Bluga, AK FIX	**12400	17500
Bluga, AK FIX *7400—MCA Amott, AK FIX, SW BND	*Amott, AK FIX	3000	17500
Is Amended by Adding			
Amott, AK FIX	Anchorage, AK VOR/DME	3000	17500
§ 95.3227 RNAV Route T227 Is Amended by Adding			
Big Lake, AK VORTAC	Sures, AK FIX	7000	17500
Sures, AK FIX *8600—MOCA	Cawin, AK FIX	*9700	17500
Cawin, AK FIX	Liber, AK FIX	9000	17500
Liber, AK FIX *4800—MCA Glows, AK FIX, S BND	*Glows, AK FIX	7100	17500
Is Amended To Read in Part			
Culti, AK FIX *5600—MOCA	Batty, AK FIX	*6100	17500
Batty, AK FIX *5200—MCA Amott, AK FIX, SW BND **12300—MOCA	*Amott, AK FIX	**13000	17500
Amott, AK FIX *2700—MOCA	Big Lake, AK VORTAC	*3400	17500
Glows, AK FIX	Fairbanks, AK VORTAC	3400	17500
§ 95.3244 RNAV Route T244 Is Amended To Read in Part			
Anchorage, AK VOR/DME *6400—MCA Cakad, AK FIX, NW BND	*Cakad, AK FIX	3000	17500
Cakad, AK FIX	Cexix, AK FIX	6600	17500
Cexix, AK FIX *7800—MCA Betpe, AK FIX, SE BND	*Betpe, AK FIX	10000	17500
Betpe, AK FIX	Cheff, AK FIX	6400	17500
Cheff, AK FIX	Confi, AK FIX	5300	17500

From	To	MEA	MAA
§ 95.3246 RNAV Route T246 Is Amended To Read in Part			
Mc Grath, AK VORTAC	*Winor, AK FIX	4900	17500
*7500—MCA Winor, AK FIX, SE BND			
Winor, AK FIX	Ffitz, AK FIX	8200	17500
Ffitz, AK FIX	*Frida, AK FIX	8800	17500
*7600—MCA Frida, AK FIX, NW BND			
Frida, AK FIX	*Ivann, AK FIX	6600	17500
*5900—MCA Ivann, AK FIX, W BND			
Ivann, AK FIX	Anchorage, AK VOR/DME	2200	17500
§ 95.3269 RNAV Route T269 Is Amended To Read in Part			
Johnstone Point, AK VOR/DME	*Fimib, AK FIX	3200	17500
*5400—MCA Fimib, AK FIX, W BND			
Fimib, AK FIX	*Anchorage, AK VOR/DME	8800	17500
*6300—MCA Anchorage, AK VOR/DME, E BND			
Yonek, AK FIX	*Torte, AK FIX	5000	17500
*8400—MCA Torte, AK FIX, W BND			
Torte, AK FIX	*Veill, AK FIX	10600	17500
*8000—MCA Veill, AK FIX, E BND			
Veill, AK FIX	Sparrevohn, AK VOR/DME	6600	17500
§ 95.4000 High Altitude RNAV Routes			
§ 95.4043 RNAV Route Q43 Is Amended To Read in Part			
Anchorage, AK VOR/DME	Big Lake, AK VORTAC	18000	45000
Big Lake, AK VORTAC	Fairbanks, AK VORTAC	18000	45000
§ 95.4045 RNAV Route Q45 Is Amended To Read in Part			
Dillingham, AK VOR/DME	Nonda, AK FIX	18000	45000
Nonda, AK FIX	Amott, AK FIX	18000	45000

From/To	Total distance	Changeover distance	Point from	Track angle	MEA	MAA
§ 95.5000 Ground-Based High Altitude RNAV Routes						
J804R Is Amended To Read in Part						
Anchorage, AK VOR/DME	60.0				18000	45000
Nowel, AK				133/314 To Nowel		
Nowel, AK	90.5				18000	45000
Middleton Island, AK VOR/DME				134/316 To Middleton Island		
J889R Is Amended To Read in Part						
Nowel, AK	75.0	10.0	Nowel	112/294 To Cop	18000	45000
Arise, AK				112/294 To Arise		
Arise, AK	71.0			112/293 To Konks	18000	45000
Konks, AK						
Konks, AK	116.0	40.0	Konks	111/294 To Cop	18000	45000
Laire, AK				294/114 To Laire		

From	To	MEA
§ 95.6001 VICTOR ROUTES—U.S.		
§ 95.6003 VOR Federal Airway V3 Is Amended To Read in Part		
Bangor, ME VORTAC	Houlton, ME VOR/DME	*2800
*2300—MOCA		
§ 95.6134 VOR Federal Airway V134 Is Amended To Read in Part		
Grand Junction, CO VOR/DME	*Paces, CO FIX	11500
*13000—MRA		
*Paces, CO FIX	#Slolm, CO FIX	13000
*13000—MRA		
#MTA V134 NE TO V220 NW 12900		
Slolm, CO FIX	*Gleno, CO FIX	14000
*16000—MRA		
*Gleno, CO FIX	Red Table, CO VOR/DME	14000

From	To	MEA
*16000—MRA		
§ 95.6159 VOR Federal Airway V159 Is Amended To Read in Part		
Nitny, FL FIX	Jupem, FL FIX	3000
Jupem, FL FIX	Vero Beach, FL VORTAC	2600
§ 95.6201 VOR Federal Airway V201 Is Amended To Read in Part		
Los Angeles, CA VORTAC	*Berri, CA FIX	5000
*7600—MCA Berri, CA FIX, N BND		
Berri, CA FIX	*Soled, CA FIX	8800
*8400—MCA Soled, CA FIX, S BND		
Soled, CA FIX	Palmdale, CA VORTAC	7500
§ 95.6209 VOR Federal Airway V209 Is Amended To Read in Part		
Kewanee, MS VORTAC	Brookwood, AL VORTAC	2400
§ 95.6211 VOR Federal Airway V211 Is Amended To Read in Part		
Brazo, NM FIX	Durango, CO VOR/DME.	
W BND		11300
E BND		13000
Durango, CO VOR/DME	Cortez, CO VOR/DME	11300
§ 95.6220 VOR Federal Airway V220 Is Amended To Read in Part		
Grand Junction, CO VOR/DME	*Paces, CO FIX	11500
*13000—MRA		
*Paces, CO FIX	#Slolm, CO FIX	13000
*13000—MRA		
#MTA V220 NE TO V220 NW 12900		
Slolm, CO FIX	Rifle, CO VOR/DME	12400
§ 95.6550 VOR Federal Airway V550 Is Amended To Read in Part		
San Antonio, TX VORTAC	Centex, TX VORTAC	3300
§ 95.6591 VOR Federal Airway V591 Is Amended To Read in Part		
Grand Junction, CO VOR/DME	*Paces, CO FIX	11500
*13000—MRA		
*Paces, CO FIX	#Slolm, CO FIX	13000
*13000—MRA		
#MTA V591 NE TO V220 NW 12900		
Slolm, CO FIX	*Gleno, CO FIX	14000
*16000—MRA		
§ 95.6319 Alaska VOR Federal Airway V319 Is Amended To Read in Part		
Johnstone Point, AK VOR/DME	*Edele, AK FIX.	
E BND		4400
W BND		10000
*6800—MCA Edele, AK FIX, W BND		
Edele, AK FIX	*Snris, AK FIX	10000
*10000—MRA		
Snris, AK FIX	*Anchorage, AK VOR/DME	8200
*6100—MCA Anchorage, AK VOR/DME, E BND		
Yonek, AK FIX	*Torte, AK FIX	
W BND		12000
E BND		7000
*11400—MCA Torte, AK FIX, W BND		
Torte, AK FIX	*Veill, AK FIX	12000
*8000—MCA Veill, AK FIX, E BND		
Veill, AK FIX	Sparrevohn, AK VOR/DME	
E BND		12000
W BND		6600
§ 95.6320 Alaska VOR Federal Airway V320 Is Amended by Adding		
Mc Grath, AK VORTAC	Erlan, AK FIX	
E BND		10000
W BND		5000
Erlan, AK FIX	Winor, AK FIX	

From	To	MEA
E BND		10000
W BND		8000
Winor, AK FIX	*Frida, AK FIX	10000
*9500—MRA		
*7600—MCA Frida, AK FIX, W BND		
Frida, AK FIX	Runtl, AK FIX	8500
Runtl, AK FIX	Kayti, AK FIX	6400
Kayti, AK FIX	*Anchorage, AK VOR/DME	3700
*6000—MCA Anchorage, AK VOR/DME, SE BND		

Is Amended To Read in Part

Anchorage, AK VOR/DME	Hoper, AK FIX	
SE BND		10000
NW BND		6500
Hoper, AK FIX	Nelli, AK FIX	10000
Nelli, AK FIX	Kebab, AK FIX	
NW BND		10000
SE BND		5000

§ 95.6388 Alaska VOR Federal Airway V388 Is Amended To Read in Part

Anchorage, AK VOR/DME	Napto, AK FIX	2300
Napto, AK FIX	Kenai, AK VOR/DME	2400

§ 95.6435 Alaska VOR Federal Airway V435 Is Amended To Read in Part

Kassi, AK FIX	Kenai, AK VOR/DME	
S BND		*4400
N BND		*2000
*1700—MOCA		
*2000—GNSS MEA		

§ 95.6436 Alaska VOR Federal Airway V436 Is Amended To Read in Part

Anchorage, AK VOR/DME	Tager, AK FIX	2200
Tager, AK FIX	*Talkeetna, AK VOR/DME	3000
*3800—MCA Talkeetna, AK VOR/DME, N BND		

§ 95.6438 Alaska VOR Federal Airway V438 Is Amended To Read in Part

Homer, AK VOR/DME	Skila, AK FIX	5000
Skila, AK FIX	Napto, AK FIX	2400
Napto, AK FIX	Anchorage, AK VOR/DME	2300
Anchorage, AK VOR/DME	Big Lake, AK VORTAC	2000
Big Lake, AK VORTAC	*Sures, AK FIX	#7500
*10000—MRA		
#MEA is Established With a Gap in Navigation Signal Coverage.		
*Sures, AK FIX	Liber, AK FIX	**10000
*10000—MRA		
**8900—MOCA		
Liber, AK FIX	*Glows, AK FIX	7500
*4800—MCA Glows, AK FIX, S BND		
Glows, AK FIX	Fairbanks, AK VORTAC	3400

§ 95.6440 Alaska VOR Federal Airway V440 Is Amended To Read in Part

Mc Grath, AK VORTAC	ERLAN, AK FIX	
E BND		10000
W BND		5000
Erlan, AK FIX	Winor, AK FIX	
E BND		10000
W BND		8000
Winor, AK FIX	*Frida, AK FIX	10000
*9500—MRA		
*7600—MCA Frida, AK FIX, W BND		
*Frida, AK FIX	**Ivann, AK FIX	6600
*9500—MRA		
**5900—MCA IVANN, AK FIX, W BND		
Ivann, AK FIX	*Anchorage, AK VOR/DME	2200
*6000—MCA Anchorage, AK VOR/DME, SE BND		
Anchorage, AK VOR/DME	Hoper, AK FIX	
SE BND		10000
NW BND		6500
Hoper, AK FIX	Modds, AK FIX	10000

From	To	MEA
Modds, AK FIX	Middleton Island, AK VOR/DME	
SE BND		6000
NW BND		10000

§ 95.6441 Alaska VOR Federal Airway V441 Is Amended To Read in Part

Middleton Island, AK VOR/DME	Deals, AK FIX	6000
Deals, AK FIX	*Sewar, AK FIX	**9000
*10000—MRA		
**8400—MOCA		
Sewar, AK FIX	Broil, AK FIX	**10000
*7700—MOCA		
*7700—GNSS MEA		
Broil, AK FIX	*Hatul, AK FIX	**7100
*5600—MCA Hatul, AK FIX, SE BND		
Hatul, AK FIX	*Anchorage, AK VOR/DME	4600
*4200—MCA Anchorage, AK VOR/DME, SE BND		

§ 95.6456 Alaska VOR Federal Airway V456 Is Amended To Read in Part

Cold Bay, AK VORTAC	Binal, AK FIX	
SW BND		*4000
NE BND		*14000
*3400—MOCA		
Binal, AK FIX	Tanie, AK FIX	*14000
*3400—MOCA		
Tanie, AK FIX	King Salmon, AK VORTAC	#*3000
*1600—MOCA		
#MEA 14000 SW When DLG FSS Shut Down.		
King salmon, AK VORTAC	Strew, AK FIX	
W BND		*3000
E BND		*9000
*2300—MOCA		
Strew, AK FIX	Bitop, AK FIX	
E BND		*9000
W BND		*5000
*5000—MOCA		
*5000—GNSS MEA		
Bitop, AK FIX	*Nosky, AK FIX	**9000
*8200—MCA Nosky, AK FIX, NE BND		
**5200—MOCA		
**6000—GNSS MEA		
Big Lake, AK VORTAC	Matta, AK FIX	7000
Matta, AK FIX	*Ureka, AK FIX	**10000
*7200—MCA Ureka, AK FIX, SW BND		
**9400—MOCA		
Ureka, AK FIX	Smoky, AK FIX	
NE BND		*7000
SW BND		*10000
*6300—MOCA		
*7000—GNSS MEA		
Smoky, AK FIX	Gulkana, AK VOR/DME	
NE BND		*5000
SW BND		*10000
*5000—GNSS MEA		

§ 95.6457 Alaska VOR Federal Airway V457 Is Amended To Read in Part

Iliamna, AK NDB/DME	*Awomy, AK FIX	
W BND		5700
E BND		9000
*7000—MCA Awomy, AK FIX, E BND		
Awomy, AK FIX	*Mofof, AK FIX	9000
*7000—MCA Mofof, AK FIX, W BND		
Mofof, AK FIX	Kenai, AK VOR/DME	
W BND	9000.	
E BND		3000

§ 95.6462 Alaska VOR Federal Airway V462 Is Amended To Read in Part

Nonda, AK FIX	*Bluga, AK FIX	**14000
*10000—MCA Bluga, AK FIX, SW BND		
**12400—MOCA		
Bluga, AK FIX	*Amott, AK FIX	7000
*7400—MCA Amott, AK FIX, SW BND		
Amott, AK FIX	Anchorage, AK VOR/DME	4000

From	To	MEA
§ 95.6508 Alaska VOR Federal Airway V508 Is Amended To Read in Part		
Middleton Island, AK VOR/DME	Deals, AK FIX	6000
Deals, AK FIX	*Sewar, AK FIX	**9000
*10000—MRA		
**8400—MOCA		
Sewar, AK FIX	*Skila, AK FIX	**9000
*5100—MCA Skila, AK FIX, E BND		
**7800—MOCA		
**8000—GNSS MEA		
Skila, AK FIX	Rojar, AK FIX	2400
Rojar, AK FIX	Kenai, AK VOR/DME	2000
Kenai, AK VOR/DME	*Nearr, AK FIX	**3000
*7600—MCA Nearr, AK FIX, W BND		
**2500—MOCA		
Nearr, AK FIX	Akgas, AK FIX	12000
Akgas, AK FIX	Sparrevohn, AK VOR/DME	6000
§ 95.6510 Alaska VOR Federal Airway V510 Is Amended To Read in Part		
Mc Grath, AK VORTAC	Erlan, AK FIX	
E BND		10000
W BND		5000
Erlan, AK FIX	Winor, AK FIX	
E BND		10000
W BND		8000
Winor, AK FIX	Ffitz, AK FIX	10000
Ffitz, AK FIX	Rohhn, AK FIX	*10000
*8800—MOCA		
*9000—GNSS MEA		
Rohhn, AK FIX	Big Lake, AK VORTAC	*4000
*3400—MOCA		

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7115 Jet Route J115 Is Amended To Read in Part			
Anchorage, AK VOR/DME	Big Lake, AK VORTAC	18000	45000
Big Lake, AK VORTAC	Fairbanks, AK VORTAC	18000	45000
§ 95.7124 Jet Route J124 Is Amended To Delete			
Anchorage, AK VOR/DME	Big Lake, AK VORTAC	18000	45000
§ 95.7133 Jet Route J133 Is Amended To Read in Part			
Anchorage, AK VOR/DME	Galena, AK VOR/DME	18000	45000
§ 95.7511 Jet Route J511 Is Amended To Read in Part			
Dillingham, AK VOR/DME	Anchorage, AK VOR/DME	21000	45000
Anchorage, AK VOR/DME	Gulkana, AK VOR/DME	18000	45000

Airway Segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points			
V220 Is Amended To Delete Changeover Point			
Grand Junction, CO VOR/DME	Rifle, CO VOR/DME	#56	Grand Junction
#COP—The COP is at the Slolm Int			
V591 Is Amended To Modify Changeover Point			
Grand Junction, CO VOR/DME	Red Table, CO VOR/DME	#56	Grand Junction
#The COP is at the Slolm Int			
Alaska V320 Is Amended To Add Changeover Point			
Mc Grath, AK VORTAC	Anchorage, AK VOR/DME	95	Mc Grath

Airway Segment		Changeover points	
From	To	Distance	From
Alaska V438 Is Amended To Add Changeover Point			
Homer, AK VOR/DME	Anchorage, AK VOR/DME	53	Homer
Alaska V440 Is Amended To Add Changeover Point			
Mc Grath, AK VORTAC	Anchorage, AK VOR/DME	95	Mc Grath
Is Amended to Delete Changeover Point			
Middleton Island, AK VOR/DME	Anchorage, AK VOR/DME	95	Middleton Island
Alaska V441 Is Amended To Modify Changeover Point			
Middleton Island, AK VOR/DME	Kenai, AK VOR/DME	85	Middleton Island
Alaska V508 Is Amended To Add Changeover Point			
Middleton Island, AK VOR/DME	Kenai, AK VOR/DME	85	Middleton Island
Kenai, AK VOR/DME	Sparrevohn, AK VOR/DME	67	Kenai
§ 95.8005 Jet Routes Changeover Points J125 Is Amended To Modify Changeover Point			
Kodiak, AK VOR/DME	Anchorage, AK VOR/DME	103	Kodiak

[FR Doc. 2012–1046 Filed 1–20–12; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30822; Amdt. No. 3461]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective January 23, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 23, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of

the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 6, 2012.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

Airac Date	State	City	Airport	FDC No.	FDC Date	Subject
9–Feb-12	NC	Greensboro	Piedmont Triad Intl	1/0283	12/9/11	ILS OR LOC RWY 5L, ILS RWY 5L (CAT II), ILS RWY 5L (CAT III), Orig
9–Feb-12	NC	Greensboro	Piedmont Triad Intl	1/0286	12/9/11	ILS OR LOC RWY 23R, Orig
9–Feb-12	WI	Madison	Blackhawk Airfield	1/0691	12/6/11	VOR OR GPS A, Orig-D
9–Feb-12	SC	Andrews	Robert F. Swinnie	1/1866	12/22/11	NDB RWY 36, Orig
9–Feb-12	AR	Paragould	Kirk Field	1/2397	12/12/11	RNAV (GPS) RWY 22, Orig-A
9–Feb-12	AR	Clinton	Holley Mountain Airpark	1/2398	12/12/11	RNAV (GPS) RWY 5, Amdt 1A
9–Feb-12	AR	Clinton	Holley Mountain Airpark	1/2399	12/12/11	RNAV (GPS) RWY 23, Amdt 1
9–Feb-12	MI	Hancock	Houghton County Memorial	1/2403	12/22/11	RNAV (GPS) RWY 7, Orig
9–Feb-12	MI	Charlevoix	Charlevoix Muni	1/2404	12/22/11	RNAV (GPS) RWY 27, Orig
9–Feb-12	WI	Superior	Richard I Bong	1/2405	12/12/11	GPS RWY 31, Orig
9–Feb-12	WI	Chetek	Chetek Muni-Southworth	1/2407	12/12/11	RNAV (GPS) RWY 17, Orig-A
9–Feb-12	WI	Necedah	Necedah	1/2408	12/12/11	RNAV (GPS) RWY 36, Orig-A
9–Feb-12	WI	Phillips	Price County	1/3689	12/15/11	RNAV (GPS) RWY 19, Orig
9–Feb-12	ME	Pittsfield	Pittsfield Muni	1/4275	12/9/11	Takeoff Minimums and Obstacle DP, Amdt 2
9–Feb-12	PA	Philadelphia	Philadelphia Intl	1/4576	12/22/11	ILS OR LOC/DME RWY 27R, ILS RWY 27R (CAT II), Amdt 10C
9–Feb-12	NC	Greensboro	Piedmont Triad Intl	1/4677	1/3/12	ILS OR LOC RWY 5R, ILS RWY 5R (CAT II), Amdt 7
9–Feb-12	FL	Jacksonville	Jacksonville Intl	1/5077	1/3/12	ILS OR LOC RWY 14, Amdt 7
9–Feb-12	AL	Mobile	Mobile Downtown	1/6072	12/9/11	VOR RWY 14, Amdt 8
9–Feb-12	AL	Mobile	Mobile Downtown	1/6074	12/9/11	RNAV (GPS) RWY 14, Amdt 1
9–Feb-12	MO	Farmington	Farmington Rgnl	1/6136	12/9/11	NDB RWY 2, Amdt 2B
9–Feb-12	MO	Farmington	Farmington Rgnl	1/6138	12/9/11	RNAV (GPS) RWY 2, Orig
9–Feb-12	MO	Farmington	Farmington Rgnl	1/6139	12/9/11	NDB RWY 20, Amdt 3
9–Feb-12	MO	Farmington	Farmington Rgnl	1/6140	12/9/11	RNAV (GPS) RWY 20, Orig
9–Feb-12	WY	Newcastle	Mondell Field	1/7741	11/28/11	VOR OR GPS RWY 31, Amdt 3

Airac Date	State	City	Airport	FDC No.	FDC Date	Subject
9–Feb-12	MO	Marshall	Marshall Memorial Muni	1/8313	12/9/11	Takeoff Minimums and Obstacle DP, Orig
9–Feb-12	LA	Slidell	Slidell	1/8760	12/9/11	RNAV (GPS) RWY 18, Orig
9–Feb-12	LA	Slidell	Slidell	1/8761	12/9/11	VOR/DME RWY 18, Amdt 4
9–Feb-12	LA	Slidell	Slidell	1/8762	12/9/11	RNAV (GPS) RWY 36, Orig-A
9–Feb-12	GA	Atlanta	Fulton County Airport—Brown Field.	1/9823	12/9/11	ILS RWY 8, Amdt 16

[FR Doc. 2012–803 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30821; Amdt. No. 3460]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective January 23, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 23, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 6, 2012.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 9 FEB 2012

Gadsden, AL, Northeast Alabama Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Phoenix, AZ, Phoenix Sky Harbor Intl, ILS OR LOC RWY 7R, Amdt 2
Phoenix, AZ, Phoenix Sky Harbor Intl, ILS OR LOC 25L, Amdt 1E
Tracy, CA, Tracy Muni, RNAV (GPS) RWY 12, Amdt 1
Longmont, CO, Vance Brand, RNAV (GPS)–B, Amdt 1
Longmont, CO, Vance Brand, Takeoff Minimums and Obstacle DP, Amdt 1
Longmont, CO, Vance Brand, VOR/DME–A, Amdt 2
Windsor Locks, CT, Bradley Intl, RNAV (GPS) RWY 33, Amdt 2A
Washington, DC, Ronald Reagan Washington National, Takeoff Minimums and Obstacle DP, Amdt 7
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 14, Amdt 1
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 32, Amdt 1
Fort Pierce, FL, St Lucie County Intl, VOR/DME RWY 14, Amdt 9
Titusville, FL, Arthur Dunn Air Park, GPS RWY 15, Orig–B, CANCELLED
Titusville, FL, Arthur Dunn Air Park, GPS RWY 33, Orig–B, CANCELLED
Titusville, FL, Arthur Dunn Air Park, RNAV (GPS) RWY 15, Orig
Titusville, FL, Arthur Dunn Air Park, RNAV (GPS) RWY 33, Orig
West Palm Beach, FL, Palm Beach Intl, ILS OR LOC RWY 10L, Amdt 26
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) Y RWY 10L, Amdt 3
West Palm Beach, FL, Palm Beach Intl, RNAV (RNP) Z RWY 10L, Amdt 1
Perry, IA, Perry Muni, GPS RWY 14, Orig-B, CANCELLED
Perry, IA, Perry Muni, RNAV (GPS) RWY 14, Orig
Perry, IA, Perry Muni, RNAV (GPS) RWY 32, Amdt 1
Belleville, IL, Scott AFB/Midamerica, ILS OR LOC/DME RWY 32L, Amdt 1
Belleville, IL, Scott AFB/Midamerica, TACAN RWY 14R, Amdt 1
Belleville, IL, Scott AFB/Midamerica, TACAN RWY 32L, Amdt 1
Chicago/Prospect Heights/Wheeling, IL, Chicago Executive, RNAV (GPS) RWY 16, Amdt 1
Chicago/West Chicago, IL, Dupage, ILS OR LOC RWY 10, Amdt 8
Decatur, IL, Decatur, RNAV (GPS) RWY 12, Orig
Decatur, IL, Decatur, RNAV (GPS) RWY 30, Amdt 1
Moline, IL, Quad City Intl, ILS OR LOC RWY 9, Amdt 31
Moline, IL, Quad City Intl, RNAV (GPS) RWY 9, Amdt 1
Moline, IL, Quad City Intl, RNAV (GPS) RWY 27, Amdt 1
Moline, IL, Quad City Intl, RNAV (GPS) Y RWY 27, Orig, CANCELLED
Augusta, KS, Augusta Muni, VOR/DME–A, Amdt 1
Plymouth, MA, Plymouth Muni, ILS OR LOC/DME RWY 6, Amdt 1A
Fort Meade (Odenton), MD, Tipton, VOR–A, Amdt 1, CANCELLED
Brunswick, ME, Brunswick Executive, ILS OR LOC/DME RWY 1R, Orig
Battle Creek, MI, W K Kellogg, RNAV (GPS) RWY 31, Orig
Battle Creek, MI, W K Kellogg, VOR OR TACAN OR GPS RWY 31, Amdt 14 CANCELLED
Cook, MN, Cook Muni, RNAV (GPS) RWY 13, Orig
Cook, MN, Cook Muni, RNAV (GPS) RWY 31, Amdt 1
Ely, MN, Ely Muni, RNAV (GPS) RWY 12, Amdt 1
Ely, MN, Ely Muni, RNAV (GPS) RWY 30, Amdt 1
Worthington, MN, Worthington Muni, ILS OR LOC RWY 29, Orig-B
Asheboro, NC, Asheboro Muni, NDB RWY 21, Amdt 3, CANCELLED
Raleigh/Durham, NC, Raleigh-Durham Intl, NDB RWY 23L, Amdt 5, CANCELLED
Rockingham, NC, Richmond County, NDB RWY 32, Amdt 3B, CANCELLED
Siler City, NC, Siler City Muni, NDB RWY 22, Amdt 1, CANCELLED
Morristown, NJ, Morristown Muni, RNAV (GPS) RWY 5, Amdt 3
Aiken, SC, Aiken Muni, ILS OR LOC/DME RWY 7, Orig
Aiken, SC, Aiken Muni, LOC RWY 7, Orig, CANCELLED
Aiken, SC, Aiken Muni, RNAV (GPS) RWY 7, Amdt 1
Aiken, SC, Aiken Muni, RNAV (GPS) RWY 25, Amdt 1
Spartanburg, SC, Spartanburg Downtown Memorial, ILS OR LOC RWY 5, Amdt 1A
Bristol/Johnson/Kingsport, TN, Tri-Cities Rgnl TN/VA, ILS OR LOC RWY 5, Amdt 3
Bristol/Johnson/Kingsport, TN, Tri-Cities Rgnl TN/VA, RNAV (GPS) RWY 5, Amdt 1
Bristol/Johnson/Kingsport, TN, Tri-Cities Rgnl TN/VA, RNAV (GPS) RWY 23, Amdt 1
Bristol/Johnson/Kingsport, TN, Tri-Cities Rgnl TN/VA, RNAV (GPS) Y RWY 23, Orig, CANCELLED
Springfield, TN, Springfield Robertson County, LOC RWY 4, Amdt 3
Springfield, TN, Springfield Robertson County, RNAV (GPS) RWY 4, Amdt 1
Springfield, TN, Springfield Robertson County, RNAV (GPS) RWY 22, Amdt 1
Springfield, TN, Springfield Robertson County, Takeoff Minimums and Obstacle DP, Amdt 1
Houston, TX, Ellington Field, ILS OR LOC RWY 17R, Amdt 6
Houston, TX, Ellington Field, ILS OR LOC RWY 22, Amdt 3E
Houston, TX, Ellington Field, ILS OR LOC RWY 35L, Amdt 5B
Houston, TX, Ellington Field, RNAV (GPS) RWY 4, Amdt 1A
Houston, TX, Ellington Field, RNAV (GPS) RWY 35L, Orig-B
Houston, TX, Ellington Field, TACAN RWY 17R, Orig
Houston, TX, Ellington Field, TACAN RWY 22, Orig
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26L, ILS RWY 26L (CAT II), ILS RWY 26L (CAT III), ILS RWY 26L (SA CAT I), Amdt 20
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26R, ILS RWY 26R (CAT II), ILS RWY 26R (CAT III), ILS RWY 26R (SA CAT I), Amdt 3
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 27, ILS RWY 27 (CAT II), ILS RWY 27 (CAT III), ILS RWY 27 (SA CAT I), Amdt 9
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 26L, Amdt 3
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 26R, Amdt 3

Houston, TX, George Bush Intercontinental/ Houston, RNAV (GPS) Z RWY 27, Amdt 3
Bryce Canyon, UT, Bryce Canyon, RNAV (GPS) RWY 21, Amdt 1
St. George, UT, St. George Muni, LDA/DME RWY 19, Orig-A
St. George, UT, St. George Muni, RNAV (GPS) RWY 19, Orig-A
Franklin, VA, Franklin Muni-John Beverly Rose, RNAV (GPS) RWY 9, Amdt 1
Franklin, VA, Franklin Muni-John Beverly Rose, RNAV (GPS) RWY 27, Amdt 1
Williamson, WV, Mingo County Rgnl, RNAV (GPS) RWY 8, Orig
Williamson, WV, Mingo County Rgnl, RNAV (GPS) RWY 26, Orig

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1216

[Notice 12–004]

RIN 2700–AD71

Procedures for Implementing the National Environmental Policy Act

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is amending its regulations governing compliance with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality's (CEQ) Code of Federal Regulations (CFR) (40 CFR parts 1500–1508). This rule replaces procedures contained in NASA's current regulations. The revised regulations are intended to improve NASA's efficiency in implementing NEPA requirements by reducing costs and preparation time while maintaining quality. In addition, NASA's experience in applying the NASA NEPA regulations since they were issued in 1988 suggested the need for NASA to make changes in its NEPA regulations.

DATES: Effective January 23, 2012.

FOR FURTHER INFORMATION CONTACT: For general information about NASA's NEPA process, readers are directed to the NASA NEPA Portal and NEPA Library at *http://www.nasa.gov/agency/nepa/.* Questions may be directed to Tina Borghild Norwood, NASA NEPA Manager, at (202) 358–7324, or via email at *Tina.Norwood-1@nasa.gov.*

SUPPLEMENTARY INFORMATION: These final regulations are a supplement to the CEQ regulations implementing NEPA. These final regulations were drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that these NASA-specific regulations would be applied with (and be bounded by) the CEQ regulations.

During the public comment period, the following documents were posted on the NASA's NEPA Portal and NEPA Library at *http://www.nasa.gov/agency/nepa/* (under *News*); the *Federal Register Notice of NASA's Proposed Rule with Preamble, Preparers,* and *More Information on NASA's Categorical Exclusions.* The **Federal Register** Notice (Volume 76, pages 43616–43629) includes a detailed preamble explaining the changes being made to NASA's NEPA regulations. The list of preparers and sample Categorical Exclusions were posted at the request of CEQ. This **Federal Register** Notice will also be posted on this Web site upon publication.

The proposed rule was published in the **Federal Register** on July 21, 2011, for a 60-day comment period. No public comments were received. Accordingly, NASA is issuing this rule with minor edits and the changes discussed below.

NASA reviewed the Categorical Exclusions (CatExs) in 1216.304(d) (1)–(5) and identified those CatExs that would require documentation (see 1216.304(d)(4) and (5)). This documentation will support the use of the CatEx for a site- or project-specific proposal, and the periodic review of CatExs stated in 1216.304(g). The reference to NASA's NEPA portal has been added to this subpart indicating where the public can access this subpart, NASA's NEPA policy, NEPA Library, public notices, and the list of NASA's NEPA personnel. NASA also added text to section 1216.302(a)(1) to identify where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

For further clarification NASA is also changing ''installation'' to ''Center'' in section 1216.305(b)(2), which describes the activities typically analyzed in an Environmental Assessment, but does not change the scope of the activities covered by that section. NASA ''Centers'' are the geographic boundaries of land that NASA manages and operates as a land-owner or tenant. NASA has ten Centers, several of which also manage remote locations. This subpart applies to all Centers in their entirety, including the management of remote locations. The Centers are comprised of ''facilities'', which are the buildings that contain offices and technical structures; such as wind tunnels, space chambers, launch structures, and laboratories. ''Laboratories'', as used in two CatExs, are a specialized type of facility.

In accordance with the CEQ NEPA regulations, 40 CFR 1507.3, NASA has consulted with CEQ regarding these final amendments to the NASA NEPA rule. CEQ has found the amendments are in conformity with NEPA and CEQ regulations.

The revisions to this subpart were included in NASA's retrospective analysis, conducted in accordance with Executive Order 13563, Improving Regulation and Regulatory Review. NASA's Final Plan for Retrospective Analysis of Existing Regulations was published in August 2011 and has been posted on the NASA NEPA portal at *http://www.nasa.gov/agency/nepa/regulatoryreview/.*

Regulatory Analysis and Notices

A. Executive Order 12866—Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This rule modifies existing policies and procedural requirements for NASA compliance with NEPA. The rule makes no substantive changes to requirements imposed on applicants for licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, NASA certifies this final rule would not have a

''significant economic impact on a substantial number of small entities.''

C. Review Under the Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Environmental Review Under the National Environmental Policy Act

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identify, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3 (b)). Categorical exclusions are an integral part of agency NEPA implementing procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing NEPA implementing regulations does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

E. Review Under Executive Order of 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. These amendments will affect NEPA compliance procedures, which are not subject to state regulation. The amendments will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

F. Review Under the Unfunded Mandates Reform Act

Under Section 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1533), Federal agencies are required to prepared a budgetary impact statement to accompany any proposed or final rule that included a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the NASA NEPA regulations affect only NASA and do not creation obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by the amendments to these regulations. There NASA has determined that further review under the Unfunded Mandates Reform Act is not required.

List of Subjects in 14 CFR Part 1216

Environmental impact statements.

For the reasons stated in the preamble, NASA amends Chapter V of Title 14 of the Code of Federal Regulations by revising subpart 1216.3 of part 1216 as set forth below.

PART 1216—ENVIRONMENTAL QUALITY

Subpart 1216.3 Procedures for Implementing the National Environmental Policy Act (NEPA)

Sec.

Authority: The National Aeronautics and Space Act of 1958, as amended (51 U.S.C. 20101 *et seq.*); The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508).

Subpart 1216.3 Procedures for Implementing the National Environmental Policy Act (NEPA)

§ 1216.300 Scope.

(a) This subpart implements NEPA, setting forth NASA's policies and procedures for the early integration of environmental considerations into planning and decision making.

(b) Through this subpart, NASA adopts the CEQ regulations implementing NEPA (40 CFR parts 1500–1508) and supplements those regulations with this subpart 1216.3, for actions proposed by NASA that are subject to NEPA requirements. This subpart is to be used in conjunction with the CEQ regulations. Consistent with the CEQ regulations at 40 CFR part 1500.3, no trivial violation of this part shall give rise to any independent cause of action. This subpart and NASA's NEPA policy are available on NASA's Public Portal at *http://www.nasa.gov/agency/nepa/*(under NEPA *Process*).

§ 1216.301 Applicability.

This subpart applies to all organizational elements of NASA.

§ 1216.302 Responsibilities.

(a) The NASA Senior Environmental Official (SEO) (as defined in Appendix A to this subpart) is responsible for overseeing and guiding NASA's integration of NEPA into the Agency's planning and decision making. The SEO, with the assistance of the Office of the General Counsel (OGC), is responsible for developing NASA NEPA regulations and maintaining up-to-date Agency-wide NEPA guidance that fully integrates NEPA analysis into Agency planning and decision-making processes. The SEO shall monitor this process to ensure that these regulations and the associated Agency guidance are achieving their purposes. In addition, the NASA SEO is responsible for coordinating with other Federal agencies and the CEQ and consolidating and transmitting NASA's comments on EISs and other NEPA documentation prepared by other Federal agencies:

(1) The NASA Headquarters/Environmental Management Division (HQ/EMD) is delegated the SEO's overall responsibility of implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making for all NASA activities. The HQ/EMD provides advice and consultation to all NASA entities in implementing their assigned responsibilities under NEPA. Interested persons can obtain information on the status of EISs and other elements of the NEPA process by contacting the NASA

NEPA Manager at HQ/EMD identified at *http://www.nasa.gov/agency/nepa/NEPATeam.html.*

(2) Each NASA Center has an environmental management office that guides and supports the working-level functions of the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising project managers.

(b) The Responsible Official shall ensure that planning and decision making for each proposed Agency action complies with these regulations and with Agency NEPA policy and guidance provided by the SEO, HQ/EMD, and the Center's environmental management office. For facility programs and projects, the Responsible Official is the individual responsible for establishing, developing, and maintaining the institutional capabilities required for the execution of programs and projects (*e.g.,* Center Director, facility manager). For other programs and projects, (*e.g.,* space flight programs/projects, R&D programs/projects) the Responsible Official is the NASA official responsible for the formulation and implementation of the program or project (*e.g.,* The Associate Administrator for Science Mission Directorate, Center Director).

(c) NASA must comply with this subpart when considering issuance of a permit, lease, easement, or grant to a non-Federal party and may seek such non-Federal party's assistance in obtaining necessary information and completing the NEPA process. The Responsible Official(s) for such action(s), in consultation with HQ/EMD and/or the Center's environmental management office, will determine the type of environmental information needed from the non-Federal party and the extent of the non-Federal party's participation in the necessary NEPA process.

§ 1216.303 NEPA process in NASA planning and decision making.

(a) NEPA requires the systematic examination of the environmental consequences of implementing a proposed Agency action. Full integration of the NEPA process with NASA project and program planning improves Agency decisions and ensures that:

(1) Planning and decision making support NASA's strategic plan commitment to sustainability and environmental stewardship and comply with applicable environmental statutes, regulations, and policies.

(2) The public is appropriately engaged in the decision-making process.

(3) Procedural risks and delays are minimized.

(b) Determining the appropriate level of NEPA review and documentation for a proposed NASA action will depend upon the scope of the action and the context and intensity of the reasonably foreseeable environmental impacts.

(c) The environmental impacts of a proposed Agency action must be considered, along with technical, economic, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will take no action which would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of its NEPA review.

§ 1216.304 Categorical exclusions.

(a) Categorical Exclusions (CatExs) are categories of Agency actions with no individually or cumulatively significant impact on the human environment and for which neither an EA nor an EIS is required. The use of a CatEx is intended to reduce paperwork, improve Government efficiency, and eliminate delays in the initiation and completion of proposed actions having no significant impact.

(b) A proposed action may be categorically excluded if the action fits within a category of actions eligible for exclusion (such categories are listed in paragraph (d) of this section)), and the proposed action does not involve any extraordinary circumstances as described in paragraph (c) of this section:

(c) Extraordinary circumstances that will preclude the use of CatExs occur when the proposed action:

(1) Has a reasonable likelihood of having (individually or cumulatively) significant impacts on public health, safety, or the environment.

(2) Imposes uncertain or unique environmental risks.

(3) Is of significantly greater scope or size than is normal for this category of action.

(4) Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, and/or local law or requirements imposed for the protection of the environment.

(5) Involves impacts on the quality of the environment that are likely to be environmentally controversial.

(6) May adversely affect environmentally sensitive resources, such as, but not limited to, federally listed threatened or endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact has been resolved through another environmental review process; *e.g.,* the Clean Water Act (CWA), the Coastal Zone Management Act (CZMA).

(7) May adversely affect known national natural landmarks, or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact has been resolved through another environmental review process; *e.g.,* the National Historic Preservation Act (NHPA).

(d) Specific NASA actions meeting the criteria for being categorically excluded from the requirements for EAs and EISs are as follows:

(1) Administrative Activities including:

(i) Personnel actions, organizational changes, and procurement of routine goods and services.

(ii) Issuance of procedural rules, manuals, directives, and requirements.

(iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.

(iv) Preparation of documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.

(v) Information-gathering exercises, such as inventories, audits, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, and routine data collection and analysis activities.

(vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.

(vii) Software development, data analysis, and/or testing, including computer modeling.

(viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

(2) Operations and Management Activities including:

(i) Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment, such as buildings, roads, grounds, utilities, communication systems, and ground support systems, such as space tracking and data systems.

(ii) Installation or removal of equipment, including component parts, at existing Government or private facilities.

(iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity's program, project, or activity.

(iv) NASA ceremonies, commemorative events, and memorial services.

(v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes, in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.

(3) Research and Development (R&D) Activities including:

(i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements and Executive orders.

(ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.

(4) Real and Personal Property Activities including:

(i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.

(ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property, or any other real property, for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any required notices in transfer documentation and any terms and conditions necessary to ensure protection of the environment, as applicable (Record of Environmental Consideration (REC) required).

(iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section (REC required).

(iv) Transfer of real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) will complete any necessary NEPA review prior to any change in land use (REC required).

(v) Acquisition of real property (including facilities) where the land use will not change substantially (REC required).

(5) Aircraft and Airfield Activities including:

(i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Relocation of similar aircraft not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (*e.g.,* noise), or permanent personnel or logistics support requirements at the receiving installation (REC required).

(e) The Responsible Official shall review the proposed action in its early planning stage and will consider the scope of the action and the context and intensity of any environmental impacts to determine whether there are extraordinary circumstances that could result in environmental impacts. If extraordinary circumstances exist, the Responsible Official will either withdraw the proposed action or initiate an EA or EIS.

(f) The NASA SEO will review the categorical exclusions at least every seven years, in accordance with CEQ guidance, to determine whether modifications, additions, or deletions are appropriate, based upon NASA's experience. Recommendations for modifications, additions, or deletions shall be submitted to the SEO for consideration and informal discussion with the CEQ.

§ 1216.305 Actions requiring environmental assessments.

(a) The Responsible Official will prepare an EA when a proposed action cannot be categorically excluded, and the proposed action is not expected to result in impacts that require analysis in an EIS. The Responsible Official will consider the scope of the action and the context and intensity of any environmental impacts when determining whether to prepare an EA.

(b) Typical NASA actions normally requiring an EA include:

(1) Specific spacecraft development and space flight projects/programs (as defined in Appendix A to this subpart).

(2) Actions altering the ongoing operations at a NASA Center which could lead directly, indirectly, or cumulatively to substantial natural or physical environmental impacts.

(3) Construction or modifications of facilities which are not minor.

(4) Proposed actions that are expected to result in significant changes to established land use.

(5) A space flight project/program that would return extraterrestrial samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive an Unrestricted Earth Return categorization (as defined in Appendix A to this subpart) from NASA's Planetary Protection Office (PPO) or the NASA Planetary Protection Subcommittee prior to the return of samples to the Earth.

§ 1216.306 Actions normally requiring an EIS.

(a) NASA will prepare an EIS for actions with the potential to significantly impact the quality of the human environment, including actions for which an EA analysis demonstrates that significant impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant impacts.

(b) Typical NASA actions normally requiring an EIS include:

(1) Development and operation of new launch vehicles or space transportation systems.

(2) [Reserved]

(c) Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (*i.e.,* a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A to this subpart) is greater than 10)).

(d) Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A to this subpart) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.

(e) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

(f) Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

§ 1216.307 Programmatic EAs, and EISs, and tiering.

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow ''tiering'' of NEPA documentation for subsequent or specific actions.

§ 1216.308 Supplemental EAs and EISs.

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

§ 1216.309 Mitigation and monitoring.

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSIs and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

§ 1216.310 Classified actions.

(a) Classification does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

(b) When classified information can reasonably be separated from other information and a meaningful environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

§ 1216.311 Emergency responses.

(a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in §§ 1216.305 and 1216.307 of this subpart, then the following provisions apply:

(1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.

(2) [Reserved]

(b) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

(c) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

Appendix A to Subpart 1206.3—Acronyms and Definitions

CatEx Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CWA Clean Water Act
CZMA Coastal Zone Management Act
DoI (U.S.) Department of the Interior
EA Environmental Assessment
EMD Environmental Management Division
EIS Environmental Impact Statement
FONSI Finding of No Significant Impact
FR Federal Register
GSA General Services Administration
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
SEO Senior Environmental Official
OGC Office of the General Counsel
PPO Planetary Protection Office
REC Record of Environmental Consideration
ROD Record of Decision
U.S.C. United States Code

Definitions

1. A2 Mission Multiple—The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the level of review and approval required for launch.
2. Earth Return Mission (also known as a Sample Return)—A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.
3. NASA Senior Environmental Official—The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.
4. Record of Environmental Consideration—A brief document that is used to describe a proposed action, identify the applicable categorical exclusion, and explain why further environmental analysis is not required.
5. Restricted Earth Return—A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.
6. Space Flight Projects/Programs—Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.
7. Unrestricted Earth Return—NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

Dated: December 23, 2011.

Charles F. Bolden, Jr.,

Administrator, National Aeronautics and Space Administration.

[FR Doc. 2012–1272 Filed 1–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9573]

RIN 1545–BF81

Damages Received on Account of Personal Physical Injuries or Physical Sickness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the exclusion from gross income for amounts received on account of personal physical injuries or physical sickness. The final regulations reflect amendments under the Small Business Job Protection Act of 1996. The final regulations affect taxpayers receiving damages on account of personal physical injuries or physical sickness and taxpayers paying these damages.

DATES: *Effective Date:* These regulations are effective on January 23, 2012.

Applicability Date: For date of applicability, see § 1.104–1(c)(3).

FOR FURTHER INFORMATION CONTACT: Sheldon Iskow, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) to reflect amendments made to section 104(a)(2) of the Internal Revenue Code (Code) by section 1605(a) and (b) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1838 (the 1996 Act). On September 15, 2009, a notice of proposed rulemaking (REG–127270–06) was published in the **Federal Register** (74 FR 47152). Written comments responding to the notice of proposed rulemaking were received. The comments are available for public inspection at *www.regulations.gov* or on request. A public hearing was requested and held on February 23, 2010. After consideration of all the comments, the proposed regulations are adopted without substantive change by this Treasury decision. The comments are discussed in the preamble.

Summary of Comments

The proposed regulations deleted the requirement that to qualify for exclusion from gross income, damages received from a legal suit, action, or settlement agreement must be based upon ''tort or tort type rights.'' The proposed regulations provided, instead, that the section 104(a)(2) exclusion may apply to damages recovered for a personal physical injury or physical sickness under a statute that does not provide for a broad range of remedies, and that the injury need not be defined as a tort.

A commentator suggested that eliminating the tort type rights test would create confusion about what constitutes a personal injury. The commentator suggested that the regulations should retain the tort type rights test but clarify that meeting the test does not depend on the nature of the remedies or the state law characterization of the cause of action.

The final regulations do not adopt this comment. Before the 1996 amendment, the section 104(a)(2) exclusion was not limited to damages for physical injuries or sickness. The tort-type rights test was intended to distinguish damages for personal injuries from, for example, damages for breach of contract. Since that time, however, *Commissioner* v. *Schleier,* 515 U.S. 323 (1995), has interpreted the statutory ''on account of'' test to exclude only damages directly linked to ''personal'' injuries or sickness. Furthermore, under the 1996 Act, only damages for personal physical injuries or physical sickness are excludable. These legislative and judicial developments have eliminated the need to base the section 104(a)(2) exclusion on tort cause of action and remedy concepts.

A commentator requested that the final regulations address whether a claimant has constructive receipt or the current economic benefit of a damage award that is set aside for the claimant's benefit in a trust or fund, such as a qualified settlement fund described in § 1.468B–1. Other commentators asked that the final regulations define certain personal injuries as physical injuries and describe the circumstances in which emotional distress is attributable to physical injuries.

The final regulations do not adopt these comments because they are beyond the scope of the proposed regulations, which did not propose rules on the issues raised by the comments. However, these comments will be considered if guidance is published on these topics in the future.

Effective/Applicability Date

These regulations apply to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. This September 13, 1995, effective date derives from an exception set forth in section 1605(d)(2) of the 1996 Act to the statutory effective date of the amendments to section 104(a)(2).

In addition, taxpayers may apply these regulations to amounts paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996, and if otherwise eligible may file a claim for refund for a taxable year for which the period of limitation on credit or refund under section 6511 has not expired. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of the 1996 Act, including the requirement that excludable damages must be received on account of personal physical injuries.

Special Analyses

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** In § 1.104–1, paragraph (c) is revised to read as follows:

§ 1.104–1 Compensation for injuries or sickness.

* * * * *

(c) *Damages received on account of personal physical injuries or physical sickness*—(1) *In general.* Section 104(a)(2) excludes from gross income the amount of any damages (other than

punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. Emotional distress is not considered a physical injury or physical sickness. However, damages for emotional distress attributable to a physical injury or physical sickness are excluded from income under section 104(a)(2). Section 104(a)(2) also excludes damages not in excess of the amount paid for medical care (described in section 213(d)(1)(A) or (B)) for emotional distress. For purposes of this paragraph (c), the term *damages* means an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution.

(2) *Cause of action and remedies.* The section 104(a)(2) exclusion may apply to damages recovered for a personal physical injury or physical sickness under a statute, even if that statute does not provide for a broad range of remedies. The injury need not be defined as a tort under state or common law.

(3) *Effective/applicability date.* This paragraph (c) applies to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. Taxpayers also may apply these final regulations to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996. If applying these final regulations to damages received after August 20, 1996, results in an overpayment of tax, the taxpayer may file a claim for refund before the period of limitations under section 6511 expires. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of section 1605 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1838).

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 6, 2011.

Emily S. McMahon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–1255 Filed 1–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

RIN 1545–BK53

Dividend Equivalents From Sources Within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to dividend equivalents for purposes of section 871(m) of the Internal Revenue Code (Code). The regulations provide guidance to nonresident aliens and foreign corporations that hold notional principal contracts (NPCs) providing for payments determined by reference to payments of dividends from sources within the United States. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules Section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 23, 2012.

Applicability Date: For dates of applicability, see §§ 1.863–7T(f),1.871–16T(g), 1.881–2T(f), 1.1441–2T(g), 1.1441–3T(k), 1.1441–4T(h), 1.1441–7T(h), and 1.1461–1T(j).

FOR FURTHER INFORMATION CONTACT: Mark E. Erwin or D. Peter Merkel at (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 871(m). Congress enacted section 871(m) (originally designated as section 871(l)) on March 18, 2010 in section 541 of the Hiring Incentives to Restore Employment Act (HIRE Act), Public Law 111–147 (124 Stat. 71).

Section 871(m) applies to securities loans, sale-repurchase transactions (repos), certain NPCs defined as ''specified notional principal contracts'' (specified NPCs), and any similar transactions that provide for a payment contingent upon or determined by reference to a U.S. source dividend (dividend equivalent). Section 871(m) treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 871(m) generally applies to any dividend equivalent made after September 14, 2010. With respect to payments made after March 18, 2012, section 871(m)(3)(B) provides that any NPC will be a specified NPC unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

Notice 2010–46, 2010–24 IRB 757, outlined a proposed framework for limiting withholding in the case of a series of securities lending or sale-repurchase transactions. While the Treasury Department and the IRS anticipate issuing proposed regulations addressing the issues raised in Notice 2010–46, these regulations do not address these concerns. See § 601.601(d)(2).

Explanation of Provisions

Section 1.871–16T(b) of these temporary regulations incorporates the definition of a specified NPC as provided in section 871(m)(3)(A). These temporary regulations extend the applicability of the section 871(m)(3)(A) statutory definition of a specified NPC through December 31, 2012. Proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules Section in this issue of the **Federal Register** outline the proposed treatment of dividend equivalents under section 871(m) beginning January 1, 2013. The Treasury Department and the IRS believe that an extension of the statutory definition of the term specified NPC is necessary to allow taxpayers and withholding agents to modify their systems and other operating procedures to comply with the rules described in the notice of proposed rulemaking.

These temporary regulations also amend several regulations to clarify the application of section 871(m). For example, temporary regulations modify § 1.863–7 to provide that that section does not apply to a dividend equivalent under section 871(m). Section 1.881–2T(b)(3) provides that section 871(m) and § 1.871–16T apply to dividend equivalents received by foreign corporations. Certain regulations under section 1441 have been amended to

require a withholding agent to withhold tax owed with respect to a dividend equivalent.

Notwithstanding these temporary regulations, the Commissioner may challenge transactions that are designed to avoid the application of these rules under applicable judicial doctrines. Nothing in these rules precludes the Commissioner from asserting that a contract labeled as an NPC or other equity derivative is in fact an ownership interest in the equity referenced in the contract.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the special analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses.

Drafting Information

The principal author of these regulations is D. Peter Merkel, the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 871(m) and 7805 * * *

■ **Par. 2.** Section 1.863–7 is amended by revising paragraph (a)(1) to read as follows:

§ 1.863–7 Allocation of income attributable to certain notional principal contracts under section 863(a).

(a) *Scope*—(1) *Introduction.* [Reserved]. For further guidance, see § 1.863–7T(a)(1).

* * * * *

■ **Par. 3.** Section 1.863–7T is added as follows:

§ 1.863–7T Allocation of income attributable to certain notional principal contracts under section 863(a) (temporary).

(a) *Scope*—(1) *Introduction.* This section provides rules relating to the source and, in certain cases, the character of notional principal contract income. However, this section does not apply to income from a section 988 transaction within the meaning of section 988 and the regulations thereunder, relating to the treatment of certain nonfunctional currency transactions. Further, this section does not apply to a dividend equivalent as defined in section 871(m) or § 1.871–15. Notional principal contract income is income attributable to a notional principal contract as defined in § 1.446–3(c). An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract, because a taxpayer cannot enter into a contract with itself.

(a)(2) through (e) [Reserved]. For further guidance, see § 1.863–7(a)(2) through (e).

(f) *Effective/applicability date.* This section applies to payments made on or after January 23, 2012.

(g) *Expiration date.* This section expires January 16, 2015.

■ **Par. 4.** Section 1.871–15T is added and reserved to read as follows:

§ 1.871–15T Treatment of dividend equivalents (temporary). [Reserved]

■ **Par. 5.** Section 1.871–16T is added to read as follows:

§ 1.871–16T Specified notional principal contracts (temporary).

(a) [Reserved].

(b) *Specified notional principal contracts between March 18, 2012 and January 1, 2013.* With respect to payments made after March 18, 2012 and before January 1, 2013, the term specified notional principal contract means any notional principal contract (as defined in § 1.446–3) if—

(1) In connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract;

(2) In connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract;

(3) The underlying security is not readily tradable on an established securities market; or

(4) In connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract.

(c) through (f) [Reserved].

(g) *Effective/applicability date.* This section applies to payments made on or after January 23, 2012.

(h) *Expiration date.* This section expires January 16, 2015.

■ **Par. 6.** Section1.881–2 is amended by adding paragraph (b)(3) to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see § 1.881–2T(b)(3).

* * * * *

■ **Par. 7.** Section 1.881–2T is added as follows:

§ 1.881–2T Taxation of foreign corporations not engaged in U.S. business (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see § 1.881–2(a) through (b)(2).

(3) *Dividend Equivalents.* For rules applicable to a foreign corporation's receipt of a dividend equivalent, see section 871(m) and § 1.871–16T.

(c) through (e) [Reserved]. For further guidance, see § 1.881–2(c) through (e).

(f) *Effective/applicability date.* This section applies on or after January 23, 2012.

(g) *Expiration date.* The applicability of this section expires on January 16, 2015.

■ **Par. 8.** Section 1.1441–2 is amended by adding paragraphs (b)(6) and (e)(7) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(6) [Reserved]. For further guidance, see § 1.1441–2T(b)(6).

* * * * *

(e) * * *

(7) [Reserved]. For further guidance, see § 1.1441–2T(e)(7).

* * * * *

■ **Par. 9.** Section 1.1441–2T is added to read as follows:

§ 1.1441–2T Amounts subject to withholding (temporary).

(a) through (b)(5) [Reserved]. For further guidance, see § 1.1441–2(a) through (b)(5).

(6) *Dividend equivalents.* Amounts subject to withholding include the payment of a dividend equivalent described in section 871(m). For this purpose, the term payment includes any gross amount that is used in computing any net amount that is transferred to or from the taxpayer under the terms of the contract.

(c) through (e)(6) [Reserved]. For further guidance, see § 1.1441–2(c) through (e)(6).

(7) *Rules for dividend equivalents.* With respect to a dividend equivalent described in section 871(m), a payment is considered made to a person when any gross amount is used in computing any net amount that is transferred to or from the person under the terms of the contract pursuant to a transaction described in section 871(m)(2). When a dividend equivalent is used to determine a net payment, the person entitled to the gross dividend equivalent is considered to have received a payment even if that person receives no payment because the net payment equals zero or that person makes a net payment.

(f) [Reserved]. For further guidance, see § 1.1441–2(f).

(g) *Effective/applicability date.* This section applies on or after January 23, 2012.

(h) *Expiration date.* The applicability of this section expires on January 16, 2015.

■ **Par. 10.** Section 1.1441–3 is amended by redesignating paragraph (h) as paragraph (j) and adding new paragraphs (h) and (i) to read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(h) [Reserved]. For further guidance, see § 1.1441–3T(h).

(i) [Reserved]. For further guidance, see § 1.1441–3T(i).

* * * * *

■ **Par. 11.** Section 1.1441–3T is added to read as follows:

§ 1.1441–3T Determination of amounts to be withheld (temporary).

(a) through (g) [Reserved]. For further guidance, see § 1.1441–3(a) through (g).

(h) *Dividend equivalents*—(1) *In general.* The gross amount of a dividend equivalent described in section 871(m) is subject to withholding in an amount equal to the gross amount of the dividend equivalent used in computing any net amount that is transferred to or from the taxpayer.

(2) *Procedures for withholding with respect to a dividend equivalent paid prior to a notional principal contract (NPC) becoming a specified NPC.* [Reserved].

(i) *Estimate or other determination of the portion of a distribution attributable to a dividend equivalent*—(1) *In general.* In determining the amount subject to withholding as a dividend equivalent, a withholding agent may use a distributing corporation's estimate or other determination with respect to the underlying security (as defined in section 871(m)(4)(C)) in applying the provisions of paragraphs (c)(2) through (c)(4) of this section. However, a withholding agent that elects to use any such estimate will be liable for the amount by which the actual amount required to be withheld exceeds the amount actually withheld and applicable penalties and interest resulting from its reliance on such estimate or determination. Failure of the withholding agent to withhold the required amount shall not be attributed to the distributing corporation.

(2) [Reserved]

(j) [Reserved]. For further guidance, see § 1.1441–3(j).

(k) *Effective/applicability date.* This section applies on or after January 23, 2012.

(l) *Expiration date.* The applicability of this section expires on January 16, 2015.

■ **Par. 12.** Section 1.1441–4 is amended by revising paragraph (a)(3)(i) and adding paragraph (a)(3)(iii) to read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1441–3T(a)(3)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1441–3T(a)(3)(iii).

* * * * *

■ **Par. 13.** Section 1.1441–4T is added to read as follows:

§ 1.1441–4T Exemptions from withholding for certain effectively connected income and other amounts (temporary).

(a)(1) through (a)(2) [Reserved]. For further guidance, see § 1.1441–4(a)(1) through (a)(2).

(3) *Income on notional principal contracts*—(i) *General rule.* Except as otherwise provided in paragraph (a)(3)(iii) of this section, a withholding agent that pays amounts attributable to a notional principal contract described in § 1.863–7(a) or § 1.988–2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under § 1.1461–1(b) and (c) reporting the income that it must treat as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must treat the income as effectively connected with the conduct of a U.S. trade or business if the income is paid to, or to the account of, a qualified business unit of a foreign person located in the United States or, if the payment is paid to, or to the account of, a qualified business unit of a foreign person located outside the United States, the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a trade or business within the United States. Income on a notional principal contract does not include the amount characterized as interest under the provisions of § 1.446–3(g)(4).

(ii) [Reserved]. For further guidance, see § 1.1441–4(a)(3)(ii).

(iii) *Exception for specified notional principal contracts.* A withholding agent that makes a payment attributable to a specified notional principal contract described in section 871(m), or § 1.871–16T that is not treated as effectively connected with the conduct of a trade or business within the United States shall have an obligation to withhold on the amount of such payment that is a dividend equivalent.

(b) through (g) [Reserved]. For further guidance, see § 1.1441–4(b) through (g).

(h) *Effective/applicability date.* This section applies on or after January 23, 2012.

(i) *Expiration date.* The applicability of this section expires on January 16, 2015.

■ **Par. 14.** Section 1.1441–7 is amended by:

■ 1. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly designated paragraph (a)(3).

■ 2. Adding a new paragraph (a)(2).

The revision and addition reads as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *

(2) [Reserved]. For further guidance, see § 1.1441–7T(a)(2).

(3) *Examples.* The following examples illustrate the rules of paragraph (a)(1) of this section:

Examples 1 through 5. [Reserved]. For further guidance, see § 1.1441–7T(a)(3) *Examples 1 through 5.*

Example 6. [Reserved]. For further guidance, see § 1.1441–7T(a)(3) *Example 6.*

* * * * *

■ **Par. 15.** Section 1.1441–7T is added to read as follows:

§ 1.1441–7T General provisions relating to withholding agents (temporary).

(a)(1) [Reserved]. For further guidance, see § 1.1441–7(a)(1).

(2) *Withholding agent with respect to dividend equivalents.* Each person that is a party to any contract or arrangement that provides for the payment of a dividend equivalent, as defined in section 871(m), shall be treated as having control and custody of such payment.

(3) *Examples.* The following examples illustrate the rules of paragraphs (a)(1) and (a)(2) of this section:

Example 1 through *Example 5* [Reserved]. For further guidance, see § 1.1441–7(a)(3), *Example 1* through *Example 5.*

Example 6. FC, a foreign corporation, enters into a notional principal contract (NPC) with Bank X, a bank organized in the United States. The NPC is a specified NPC for purposes of section 871(m). FC is the long party to the contract and Bank X is the short party. The NPC references a specified number of shares of dividend-paying common stock issued by a domestic corporation. As the long party, FC receives payments from Bank X based on any appreciation in the value of the common stock and dividends paid with respect to the common stock. As the short party, Bank X receives payment from FC based on any depreciation in the value of the common stock and a payment based on LIBOR. Bank X is a withholding agent because Bank X is deemed to have control and custody of a dividend equivalent as a party to the NPC. If FC's tax liability under section 881 has not been satisfied in full by Bank X as withholding agent, FC is required to file a return on Form 1120–F (U.S. Income Tax Return of a Foreign Corporation).

(b)(1) through (g) [Reserved]. For further guidance, see § 1.1441–7(b)(1) through (g).

(h) *Effective/applicability date.* This section applies on or after January 23, 2012.

(i) *Expiration date.* The applicability of this section expires on January 16, 2015.

■ **Par. 16.** Section 1.1461–1 is amended by:

■ 1. Redesignating paragraphs (c)(2)(i)(L) and (c)(2)(i)(M) as (c)(2)(i)(M) and (c)(2)(i)(N), respectively.

■ 3. Adding a new paragraph (c)(2)(i)(L). The addition reads as follows:

§ 1.1461–1 Payment and returns of tax withheld.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(L) [Reserved]. For further guidance, see § 1.1461–1T(c)(2)(L).

* * * * *

■ **Par. 17.** Section 1.1461–1T is added as follows:

§ 1.1461–1T Payment and returns of tax withheld (temporary).

(a) through (c)(2)(i)(K) [Reserved]. For further guidance, see § 1.1461–1(a) through (c)(2)(i)(K).

(L) Dividend equivalents as defined in section 871(m) and the regulations thereunder;

(c)(2)(i)(M) through (i) [Reserved]. For further guidance, see § 1.1461–1(c)(2)(i)(M) through (i).

(j) *Effective/applicability date.* This section applies on or after January 23, 2012.

(k) *Expiration date.* The applicability of this section expires on January 16, 2015.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: January 3, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury, Tax Policy.

[FR Doc. 2012–1234 Filed 1–19–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0532]

RIN 1625–AA00

Safety Zone; Export Grain Terminal (EGT), Columbia River, Longview, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the Export Grain Terminal located on the Columbia River in Longview, WA. This safety zone extends to waters of the Columbia River approximately between the navigable channel and the Export Grain Terminal in Longview, WA. This safety zone is being implemented to ensure that protest activities associated with the opening of the Export Grain Terminal to maritime traffic does not result in hazardous navigation conditions in the area of the terminal's piers and wharves.

DATES: This rule is effective from 12:01 a.m. on January 23, 2012 until 12:01 a.m. on April 1, 2012. Comments must be received on or before March 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0532 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0532 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BM1 Sylvestre Suga, Waterways Management Division, Coast Guard Marine Safety Unit Portland; telephone (503) 240–9319, email *Sylvestre.G.Suga@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 interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be contrary to public interest because delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

On September 8, 2011, a large protest occurred at the Export Grain Terminal

(EGT) in which over 200 protestors were arrested for criminal offenses including assault. These protest activities resulted in damage to rail cars and the cargo they were carrying. The Longview local International Longshore and Warehouse Union (ILWU) has also been subject to fines for contempt of court for engaging in activity that violated a temporary restraining order. Subsequent protest activities aimed at blocking rail access to EGT on September 21, 2011 led to further arrests.

These protest activities arose from a labor dispute between the ILWU, the Port of Longview, and EGT. The dispute is ongoing and picketing activity occurs daily at the EGT facility in Longview, WA. EGT has not yet opened for vessel traffic; however, as recently as November 5, 2011, the president of the ILWU's Local 21, has threatened that protest activities will be mounted when the first vessel arrives to load at EGT's facility.

The schedule of vessel arrivals at EGT is controlled by a number of factors over which the Coast Guard has no control. Additionally, these vessels may be arriving at EGT from foreign ports. Consequently, it is impracticable for grain-shipment vessel arrival schedules to be changed or delayed in order to accommodate a notice of proposed rulemaking and subsequent comment period.

Due to past protest events, threats of similar protest activity in the future, and the significant difficulty and impracticality of changing vessel arrival schedules, the Coast Guard finds it is contrary to the public interest to delay implementation of this safety zone during a notice and comment period. Postponing the promulgation creates a very likely risk that protest activities will threaten safe navigation and the safety of persons and property on the Columbia and Snake rivers when vessels begin arriving at EGT, Longview, WA.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do otherwise would be contrary to the public interest since the protest activities associated with EGT are unpredictable and potentially volatile and may result in injury to persons and property. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Snake Rivers before the end of a 30-day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the transit of grain-shipment vessels that may arrive or depart before 30 days have elapsed.

Although the Coast Guard has good cause to issue this temporary rule without first publishing a proposed rule, you are invited to submit post-promulgation comments and related material regarding this rule through March 1, 2012. All comments will be reviewed as they are received. Your comments will assist us in drafting future rules should they be necessary, and may result in changes to this temporary interim rule before it expires. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) for their Docket Management Facility to process online submissions to Coast Guard dockets. You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Background and Purpose

The ILWU, the Port of Longview, WA, and EGT have been engaged in a labor dispute related to the newly-constructed facility. In addition to picketing, ILWU members have engaged in protest activities that have resulted in personal injury and property damage. In particular, a large-scale protest on September 8, 2011 led to arrests for criminal offenses. Additionally, protesters blocked the arrival of the first rail delivery of cargo to the facility. Although the focus of these protests was ashore, there were some waterborne protest activities on the waters adjacent to the EGT piers. The area in which this waterborne protest activity occurred is covered by this safety zone. Although there was no inherent hazard posed by protest vessels in this area before the facility opened for maritime traffic, similar activity may be hazardous for both those protesting and commercial vessel traffic once the terminal begins receiving vessels.

The labor dispute continues, as do the protest efforts. As recently as November 5, 2011, the president of the ILWU's Local 21 threatened that protest activities, similar to those that occurred upon the arrival of the first rail shipment, will be mounted when the first vessel arrives to load at EGT's facility. Once EGT opens for vessel traffic, grain-shipment vessels will be transiting the Columbia and Snake Rivers with cargos of various grain products bound for and departing from EGT at Longview, WA. Based on the past violent protest activities and the ILWU's stated intent to interfere with the inaugural vessel arrival at EGT, Longview, WA, the Coast Guard has determined that a temporary safety zone is required in the area between the shoreline and the navigable channel where the EGT piers and wharves are located.

This safety zone is being implemented to help ensure the safe navigation of maritime traffic in the area around EGT's piers and wharves on the Columbia River and that vessels bound for EGT are able to moor there safely. This safety zone applies equally to all waterway users and is intended to allow maximal use of the waterway consistent with safe navigation and to ensure that protestors are not injured by deep-draft vessels with maneuvering characteristics with which protesters afloat may be unfamiliar.

Discussion of Rule

This rule establishes a temporary safety zone around the Export Grain Terminal located on the Columbia River at the Port of Longview, WA. The safety zone is enclosed by three lines and the shoreline: line one starting on the shoreline at 45–06′01″ N/122–56′25″ W then heading 250 yards offshore to 46–05′55″ N/122–56′30″ W then heading up river 825 yards to 46–05′46″ N/122–56′00″ W then heading 300 yards to the shoreline ending at 46–05′54″ N/122–55′53″ W. Geographically this rule will cover all waters of the Columbia River between the navigable channel and the Export Grain Terminal in Longview, WA. No person or vessel may enter or remain in the safety zone unless authorized by the Captain of the Port, Columbia River or his designated representatives.

This rule is effective from 12:01 a.m. on January 23, 2012 until 12:01 a.m. on April 1, 2012.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The safety zone is limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the safety zone will only be effective for a limited geographical location over a limited duration; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the safety zone will only be effective for a limited geographical location over a limited duration; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We believe that this rule and the process by which it was drafted adhere to the federalism principles outlined in Executive Order 13132. The Coast Guard has coordinated with the officials from the states of Oregon and Washington in drafting this rule. By allowing state enforcement of this rule, it is in accord with paragraph (h) of section 2 of the Executive Order, which encourages recognition of responsibility of localities and their sub-units to pursue objectives through their own means. This rule puts no obligation on state or municipal governments, but simply allows for their participation in enforcement activities.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–201 to read as follows:

§ 165.T13–201 Safety Zone; Export Grain Terminal (EGT), Columbia River, Longview, WA.

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

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a grain-shipment vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(7) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) *Location.* The following area is a safety zone: All navigable waters of the United States within the Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: Line one starting on the shoreline at 45–06′01″ N/122–56′25″ W then heading 250 yards offshore to 46–05′55″ N/122–56′30″ W then heading up river 825 yards to 46–05′46″ N/122–56′00″ W then heading 300 yards to the shoreline ending at 46–05′54″ N/122–55′53″ W. Geographically this rule will cover all waters of the Columbia River between the navigable channel and the Export Grain Terminal in Longview, WA.

(c) *Effective Period.* The safety zone created in this section will be in effect from 12:01 a.m. on January 23, 2012 until 12:01 a.m. on April 1, 2012. It will be activated for enforcement as described in paragraph (d) of this section.

(d) *Enforcement Periods.* The Captain of the Port Columbia River will cause notice of the enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Captain of the Port Columbia River will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of this safety zone is suspended. Upon notice of enforcement by the Captain of the Port Columbia River, the Coast Guard will enforce this safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Columbia River, all persons and vessels are authorized to enter, transit, and exit the grain-shipment vessel safety zone, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Columbia River, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within this safety zone contact the on-scene official patrol on VHF–FM channel 16 or 13. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within this safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within this safety zone.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(h) *Waiver.* The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: January 6, 2012.

B. C. Jones,

Captain, U. S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–1170 Filed 1–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1069]

RIN 1625–AA00

Safety Zone; Grain-Shipment Vessels, Columbia and Snake Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone around all inbound and outbound grain-shipment vessels involved in commerce with Export Grain Terminal, Longview, WA, while they are located on the Columbia and Snake Rivers. This safety zone extends to waters 500 yards ahead of these vessels and 200 yards abeam and astern of these vessels. This safety zone is being implemented to ensure that protest activities associated with the opening of the Export Grain Terminal to maritime traffic does not prevent safe navigation of grain shipment vessels and other vessels using the waterway during grain-shipment vessel transits to and from the terminal.

DATES: This rule is effective from 12:01 a.m. on January 23, 2012 until 12:01 a.m. on April 1, 2012. Comments must be received on or before March 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1069 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1069 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BM1 Sylvestre Suga, Waterways Management Division, Coast Guard Marine Safety Unit Portland; telephone (503) 240–9319, email *Sylvestre.G.Suga@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 interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be contrary to public interest because delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

On September 8, 2011, a large protest occurred at Export Grain Terminal (EGT) in which over 200 protestors were arrested for criminal offenses including assault. These protest activities resulted in damage to rail cars and the cargo they were carrying. The Longview local International Longshore and Warehouse Union (ILWU) has also been subject to fines for contempt of court for engaging in activity that violated a temporary restraining order. Subsequent protest activities aimed at blocking rail access to EGT on September 21, 2011 led to further arrests.

These protest activities arose from a labor dispute between the ILWU, the Port of Longview, and EGT. The dispute is ongoing and picketing activity occurs daily at the EGT facility in Longview, WA. EGT has not yet opened for vessel traffic; however, as recently as November 5, 2011, the president of the ILWU's Local 21 has threatened that protest activities will be mounted when the first vessel arrives to load at EGT's facility.

The schedule of vessel arrivals at EGT is controlled by a number of factors over which the Coast Guard has no control. Additionally, these vessels may be arriving at EGT from foreign ports. Consequently, it is impracticable for grain-shipment vessel arrival schedules to be changed or delayed in order to accommodate a notice of proposed rulemaking and subsequent comment period.

Due to past protest events, threats of similar protest activity in the future, and the significant difficulty and impracticality of changing vessel arrival schedules, the Coast Guard finds it is contrary to the public interest to delay implementation of this safety zone during a notice and comment period. Postponing the promulgation creates a very likely risk that protest activities will threaten safe navigation and the safety of persons and property on the Columbia and Snake rivers when vessels begin arriving at EGT, Longview, WA.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do otherwise would be contrary to the public interest since the protest activities associated with EGT are unpredictable and potentially volatile and may result in injury to persons and property. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Snake Rivers before the end of a 30 day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the transit of grain-shipment vessels that may arrive or depart before 30 days have elapsed.

Although the Coast Guard has good cause to issue this temporary rule without first publishing a proposed rule, you are invited to submit post-promulgation comments and related material regarding this rule through March 1, 2012. All comments will be reviewed as they are received. Your comments will assist us in drafting future rules should they be necessary, and may result in changes to this temporary interim rule before it expires. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) for their Docket Management Facility to process online submissions to Coast Guard dockets. You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Background and Purpose

The ILWU, the Port of Longview, WA, and EGT have been engaged in a labor dispute related to the newly-constructed facility. In addition to picketing, ILWU members have engaged in protest activities that have resulted in personal injury and property damage. In particular, a large-scale protest on

September 8, 2011 led to arrests for criminal offenses. Additionally, protesters blocked the arrival of the first rail delivery of cargo to the facility. Although the focus of these protests was ashore, there were some waterborne protest activities on the waters adjacent to the EGT piers.

The labor dispute continues, as do the protest efforts. As recently as November 5, 2011, the president of the ILWU's Local 21 threatened that protest activities, similar to those that occurred upon the arrival of the first rail shipment, will be mounted when the first vessel arrives to load at EGT's facility. Once EGT opens for vessel traffic, grain-shipment vessels will be transiting the Columbia and Snake Rivers with cargos of various grain products bound for and departing from EGT at Longview, WA. Based on the past violent protest activities and the ILWU's stated intent to interfere with the inaugural vessel arrival at EGT, Longview, WA, the Coast Guard has determined that a temporary safety zone is required around vessels bound for and departing from that facility.

This safety zone is being implemented to help ensure the safe navigation of maritime traffic on the Columbia River while grain-shipment vessels transit to and from EGT at Longview, WA. This safety zone applies equally to all waterway users and is intended to allow maximal use of the waterway consistent with safe navigation and to ensure that protestors are not injured by deep-draft vessels with maneuvering characteristics with which protesters afloat may be unfamiliar.

Discussion of Rule

This rule establishes a temporary safety zone around grain-shipment vessels while they are located in the Columbia and Snake Rivers. This safety zone extends to waters 500 yards ahead of grain-shipment vessels and 200 yards abeam and astern of these vessels. No person or vessel may enter or remain in the safety zone without authorization from the Captain of the Port Columbia River or his designated representatives.

This rule is effective from 12:01 a.m. on January 23, 2012 until 12:01 a.m. on April 1, 2012.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) Individual grain-shipment vessel safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the grain-shipment vessel safety zone; (iii) the grain-shipment vessel safety zone will only be effective for a limited geographical location over a limited duration while grain-shipment vessels transit to berth; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual grain-shipment vessel safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the grain-shipment vessel safety zone; (iii) the grain-shipment vessel safety zone for any given transiting grain-shipment vessel will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We believe that this rule and the process by which it was drafted adhere to the federalism principles outlined in Executive Order 13132. The Coast Guard has coordinated with the officials from the states of Oregon and Washington in drafting this rule. By allowing state enforcement of this rule, it is in accord with paragraph (h) of section 2 of the Executive Order, which encourages recognition of responsibility of localities and their sub-units to pursue objectives through their own means. This rule puts no obligation on state or municipal governments, but simply allows for their participation in enforcement activities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–200 to read as follows:

§ 165.T13–200 Safety Zone; Grain-Shipment Vessels, Columbia and Snake Rivers

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

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Grain-Shipment Vessel* means any vessel bound for or departing from Export Grain Terminal (EGT), Longview, WA, or any vessel assisting such a vessel to moor or maneuver.

(3) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(4) *Navigation Rules* means the Navigation Rules, International-Inland.

(5) *Official Patrol* means those persons designated by the Captain of the Port to monitor a grain-shipment vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(6) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(7) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) *Location.* The following areas are safety zones: All navigable waters of the United States within the Columbia River Captain of the Port Zone, between the Columbia Bar ''CR'' buoy and extending eastward on the Columbia River to Kennewick, WA and upriver through Lewiston, ID on the Snake River, extending from the surface to the sea floor, that are:

(1) Not more than 500 yards ahead of any grain-shipment vessel that is underway and 200 yards abeam and astern of any grain-shipment vessel underway, or

(2) Within a maximum 200-yard radius of any grain-shipment vessel that is anchored, at any berth, moored, or in the process of mooring.

(c) *Effective Period.* The safety zone created in this section will be in effect

from 12:01 a.m. on January 23, 2012 until 12:01 a.m. on April 1, 2012. It will be activated for enforcement as described in paragraph (d) of this section.

(d) *Enforcement Periods.* The Captain of the Port Columbia River will cause notice of the enforcement of the grain-shipment vessel safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. This notification of enforcement will identify the grain-shipment vessel by name and IMO number. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Captain of the Port Columbia River will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the grain-shipment vessel safety zone is suspended. Upon notice of enforcement by the Captain of the Port Columbia River, the Coast Guard will enforce the grain-shipment vessel safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Columbia River, all persons and vessels are authorized to enter, transit, and exit the grain-shipment vessel safety zone, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Columbia River, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within a grain-shipment vessel safety zone contact the on-scene official patrol on VHF–FM channel 16 or 13. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within a grain-shipment vessel safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within a grain-shipment vessel safety zone.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within a grain-shipment vessel safety zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within a grain-shipment vessel safety zone; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within a grain-shipment vessel safety zone in order to do so.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(h) *Waiver.* The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: January 6, 2012.

B. C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–1171 Filed 1–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1164]

RIN 1625–AA87

Security Zone; Choptank River and Cambridge Channel, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Choptank River and Cambridge Channel in order to safeguard high-ranking public officials from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 8 a.m. on January 25, 2012, until 11:59 p.m. on January 27, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1164 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1164 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Ronald L. Houck, at Sector Baltimore Waterways Management Division, Coast Guard; telephone (410) 576–2674, email *Ronald.L.Houck@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 is contrary to public interest to delay the effective date of this rule. The Coast Guard is establishing the security zone to protect high-ranking government officials, mitigate potential terrorist acts, and enhance public and maritime safety

and security. The Coast Guard was unable to publish a NPRM due to the short time period between event planners notifying the Coast Guard of the event and publication of the security zone. Furthermore, delaying the effective date would be contrary to the security zone's intended objectives of protecting high-ranking government officials, mitigating potential terrorist acts and enhancing public and maritime safety security.

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**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment, therefore, a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zone's intended objectives of protecting high-ranking government officials, mitigating potential terrorist acts and enhancing public and maritime safety and security.

Background and Purpose

The U.S. House of Representatives Democratic Issues Conference will be held at the Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina in Cambridge, Maryland during January 25–27, 2012. Activities associated with this event include the movement of high-ranking United States officials across the Senator Frederick C. Malkus Memorial (US–50) Bridge at Cambridge, Maryland. The event is located along the waterfront in Cambridge, MD, in close proximity to navigable waterways within the Captain of the Port's Area of Responsibility.

The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce. The Captain of the Port Baltimore is establishing this security zone to protect high-ranking government officials, mitigate potential terrorist acts, and enhance public and maritime safety and security in order to safeguard life, property, and the environment on or near the navigable waters.

Discussion of Rule

Through this regulation, the Coast Guard will establish a security zone. The security zone will be in effect from 8 a.m. on January 25, 2012, through 11:59 p.m. on January 27, 2012. The security zone will include all navigable waters of the Choptank River, within 2,000 yards of the Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina's Breakwater Pavilion, in approximate position latitude 38°33′54″ N, longitude 076°02′47″ W, located in Cambridge, Maryland. In addition, the security zone will include all navigable waters of the Choptank River and Cambridge Channel, within an area bounded on the west by a line drawn between position latitude 38°35′52″ N, longitude 076°03′11″ W and position latitude 38°34′25″ N, longitude 076°04′14″ W and bounded on the east by a line drawn between position latitude 38°35′06″ N, longitude 076°02′27'' W and position latitude 38°34′02″ N, longitude 076°03′10″ W. These locations are entirely within the Area of Responsibility of the Captain of the Port Baltimore, as set forth at 33 CFR 3.25–15.

This rule provides that entry into, attempted entry into, or remaining in this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Except for persons or vessels authorized by the Captain of the Port Baltimore, no person or vessel may enter or remain in the regulated area during the effective period. Vessels already at berth, mooring, or anchor at the time the security zone is implemented, however, do not have to depart the security zone. All vessels underway within the security zone at the time it becomes effective are to depart the zone immediately. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the security zone can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard will issue Broadcast Notices to Mariners to further publicize the security zone.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this security zone restricts vessel traffic through the affected area, vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone. Furthermore, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

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 may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the security zone during the enforcement period. The security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone is of limited size and duration. Although the security zone will apply to the entire widths of the Choptank River and Cambridge Channel, traffic may be allowed to pass through the zone with the permission of the Captain of the Port Baltimore. Before the effective period, maritime advisories will be widely available to the maritime community.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call

1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary security zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–1164 to read as follows:

§ 165.T05–1164 Security Zone; Choptank River and Cambridge Channel, Cambridge, MD.

(a) *Locations.* The following areas are a security zone:

(1) All waters of the Choptank River, within 2,000 yards of the Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina's Breakwater Pavilion, in approximate position latitude 38°33′54″ N, longitude 076°02′47″ W, located in Cambridge, Maryland; and

(2) All waters of the Choptank River and Cambridge Channel, within an area bounded on the west by a line drawn between position latitude 38°35′52″ N, longitude 076°03′11″ W and position latitude 38°34′25″ N, longitude 076°04′14″ W and bounded on the east by a line drawn between position latitude 38°35′06″ N, longitude 076°02′27″ W and position latitude 38°34′02″ N, longitude 076°03′10″ W. All positions refer to North American Datum 1983.

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

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary section, § 165.T05–1164.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented, however, do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone. The Captain of the Port Baltimore may, in his discretion, grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number (410) 576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

(d) *Enforcement period.* The security zone will be enforced from 8 a.m. on January 25, 2012, through 11:59 p.m. on January 27, 2012.

Dated: January 10, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–1172 Filed 1–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AD06

[Docket ID ED–2010–OPE–0012]

Program Integrity: Gainful Employment—Debt Measures; Correction

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On June 13, 2011, the Secretary of Education (Secretary) published a notice of final regulations in the **Federal Register** for Program Integrity: Gainful Employment—Debt Measures (Gainful Employment—Debt Measures) (76 FR 34386). In the preamble of the final regulations, we used the wrong data to calculate the percent of total variance in institutions' repayment rates that may be explained by race/ethnicity. Our intent was to use the data that included all minority students per institution. However, we mistakenly used the data for a subset of minority students per institution. We have now recalculated the total variance using the data that includes all minority students. Through this document, we correct, in the preamble of the Gainful Employment—Debt Measures final regulations, the errors resulting from this misapplication. We do not change the regression analysis model itself; we are using the same model with the appropriate data. Through this notice we also correct, in the preamble of the Gainful Employment—Debt Measures final regulations, our description of one component of the regression analysis. The preamble referred to use of an institutional variable measuring acceptance rates. This description was incorrect; in fact we used an institutional variable measuring retention rates. Correcting this language does not change the regression analysis model itself or the variance explained by the model. The text of the final regulations remains unchanged.

DATES: These regulations are effective July 1, 2012.

FOR FURTHER INFORMATION CONTACT: John Kolotos or David Bergeron for general information only. Telephone: (202) 502–7805. Any other questions or requests for information regarding these final regulations must be submitted to: *GEQuestions@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: We make the following corrections to the Gainful Employment—Debt Measures final regulations:

On page 34460, third column, we correct the phrase ''(i.e., 72 percent for 4-year public institutions; 57 percent for 2-year nonprofit institutions; and 56 percent for 4-year nonprofit institutions).'' to read ''(i.e., 71 percent for 4-year public institutions; 64 percent for 2-year nonprofit institutions; and 61 percent for 4-year nonprofit institutions).''

On page 34461, first column, first paragraph, we correct the sentences ''Similarly, in four of the nine models, the proportion of an institution's student body that was represented by students identified as racial/ethnic minorities was a statistically significant predictor. However, in no case did it explain more than approximately 13 percent of variance in repayment rates.'' to read ''Similarly, in eight of the nine models, the proportion of an institution's student body that was represented by students identified as racial/ethnic minorities was a statistically significant predictor. Across those models, it ranged from explaining 6.5 percent (4-year, for-profit institutions) to 37.8 percent (2-year, nonprofit institutions) of the variance in repayment rates.''

On page 34461, second column, first full paragraph, we correct the phrase ''72 percent'' to read ''71 percent''.

On page 34461, second column, first full paragraph, we correct the sentence ''However, when used as a sole predictor, the percentage of Pell Grant recipients was not a statistically significant predictor.'' to read ''An institution's percentage of minority students explained 29 percent of the variance in repayment rates when used as a sole predictor.''

On page 34461, second column, second full paragraph, we correct the phrase ''56 percent'' to read ''61 percent''.

On page 34461, third column, carryover paragraph, we correct the phrase ''less than 2 percent'' to read ''31 percent''.

On page 34461, third column, first full paragraph, we correct the phrase ''22 percent'' to read ''27 percent''.

On page 34461, third column, first full paragraph, we correct the sentence ''The racial/ethnic composition of an institution's student body was not a statistically significant predictor when used alone to model repayment rates, and, although the percentage of students receiving Pell Grants was predictive, it explained only 7 percent of the variance in repayment rates.'' to read ''Both the

racial/ethnic composition of an institution's student body and the percentage of the students receiving Pell Grants were predictive when used alone in separate models, each explaining about 7 percent of the variance in repayment rates.''

On page 34461, third column, second full paragraph, we correct the phrase ''13 percent'' to read ''17 percent''.

On page 34461, third column, second full paragraph, we correct the phrase ''(around 1 percent and 3 percent, respectively)'' to read ''(around 8 percent and 3 percent, respectively)''.

On page 34462, first column, first paragraph, we correct the phrase ''57 percent'' to read ''64 percent''.

On page 34462, first column, second paragraph, we correct the phrase ''44 percent'' to read ''47 percent''.

On page 34462, first and second columns, we correct the sentence ''Share of racial/ethnic minority enrollment was not a statistically significant predictor when used in its own model to predict repayment rates.'' to read ''Share of racial/ethnic minority enrollment explained approximately 19 percent of the variance in repayment rates when used alone in a model to predict repayment rates.''

On page 34462, second column, first full paragraph, we correct the sentences ''Overall, our regression model was not statistically significant for less-than-2-year public institutions. When used as the only predictor of repayment rates, share of racial/ethnic minority enrollment was statistically significant, explaining approximately 4 percent of the potential variance. The share of students receiving Pell grants was not statistically significant in its stand alone model.'' to read ''Overall, none of our regression models was statistically significant for less-than-2-year public institutions.''

On page 34462, second column, second full paragraph, we correct the phrase ''39 percent'' to read ''42 percent''.

On page 34462, second and third columns, we correct the sentence ''Share of racial/ethnic minority enrollment was not a statistically significant predictor.'' to read ''Share of racial/ethnic minority enrollment explained approximately 11 percent of the potential variance.''

On page 34462, third column, first full paragraph, we correct the phrase ''27 percent'' to read ''28 percent''.

On page 34462, third column, first full paragraph, we correct the sentence ''The percentage of students identified as racial/ethnic minorities was not statistically significant.'' to read ''Share of racial/ethnic minority enrollment explained approximately 14 percent of the potential variance.''

On page 34462, third column, second full paragraph, we correct the phrase ''1 percent'' to read ''20 percent''.

On page 34511, first column, paragraph (d), we correct the phrase ''And, among 4-year institutions, a measure of institutional selectivity: An institutions acceptance rate (AcceptRate08)'' to read ''And, among 4-year institutions, measures of part-time (ptfall08cohortretained) and full-time (ftfall09cohortretained) retention.''

On page 34461, Table 4 is corrected to read as follows:

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Table 4: Summary of Multivariate Regression Analysis

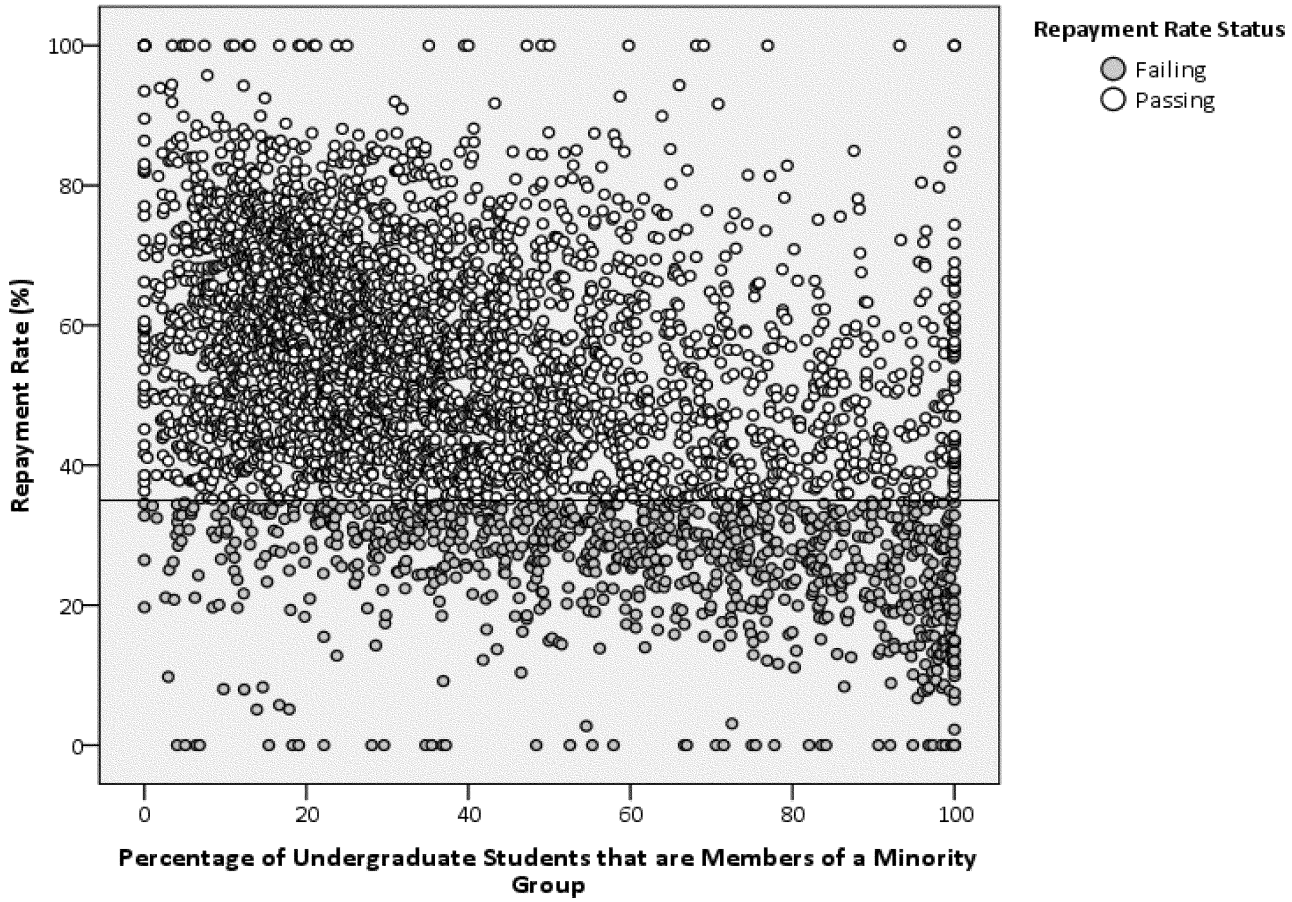
	Full Model		Pell Only		Race/Ethnicity Only	
	Predictive?	Percent of Total Variance Explained	Predictive?	Percent of Total Variance Explained	Predictive?	Percent of Total Variance Explained
4-year Institutions						
Public	Yes	71	Yes	49	Yes	29
Private Nonprofit	Yes	61	Yes	41	Yes	31
Private For-profit	Yes	27	Yes	7	Yes	7
2-year Institutions						
Public	Yes	17	Yes	3	Yes	8
Private Nonprofit	Yes	64	Yes*	39	Yes	38
Private For-profit	Yes	47	Yes	26	Yes	19
Less-than-2-year Institutions						
Public	No		No		No	
Private Nonprofit	Yes	42	Yes	29	Yes	11
Private For-profit	Yes	28	Yes	16	Yes	14
Overall						
All Institutions	Yes	49	Yes	23	Yes	20

Source: **NSLDS and IPEDS**

*Table 4 included in the regulatory impact analysis published with the Federal Register on June 13, 2011, indicated that Pell Only was not predictive among 2-year private nonprofit institutions, when it should have indicated that it was predictive.

On page 34464, Chart B is corrected to read as follows:

Chart B: Repayment Rates by Minority Student Concentration



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Source: NSLDS and IPEDS.

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Dated: January 18, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–1245 Filed 1–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD85

Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore—Off-Road Vehicle Management

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates off-road vehicle (ORV) routes and authorizes limited ORV use within Cape Hatteras National Seashore (Seashore) in a manner that will protect and preserve natural and cultural resources, provide a variety of safe visitor experiences, and minimize conflicts among various users. Under National Park Service (NPS) general regulations, the operation of motor vehicles off of roads within areas

of the National Park System is prohibited unless authorized by special regulation.

DATES: This rule is effective February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954. Phone: (252) 473–2111 (ext. 148).

SUPPLEMENTARY INFORMATION:

Background

Description of Cape Hatteras National Seashore

Situated along the Outer Banks of North Carolina, Cape Hatteras National Seashore was authorized by Congress in 1937 and established in 1953 as the nation's first national seashore. Consisting of more than 30,000 acres distributed along approximately 67 miles of shoreline, the Seashore is part of a dynamic barrier island system.

The Seashore serves as a popular recreation destination where visitors participate in a variety of recreational activities. The Seashore also contains important wildlife habitat created by dynamic environmental processes. Several species listed under the Endangered Species Act (ESA), including the piping plover, seabeach amaranth, and three species of sea turtles, are found within the park.

Authority and Jurisdiction

In enacting the National Park Service Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*), Congress granted the NPS broad authority to regulate the use of areas under its jurisdiction. Section 3 of the Organic Act specifically authorizes the Secretary of the Interior, acting through the NPS, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * * .''

Off-Road Motor Vehicle Regulation

Executive Order (E.O.) 11644, Use of Off-road Vehicles on the Public Lands, was issued in 1972 in response to widespread and rapidly increasing off-road driving on public lands ''often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.'' E.O. 11644 was amended by E.O. 11989 in 1977 to add a provision that allows agency heads to immediately close areas or trails to off-road vehicle use if the agency head determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails on public lands.

Section 3 of E.O. 11644 requires agencies to develop and issue regulations and administrative instructions to provide for administrative designation of the specific areas or trails on public lands on which the use of off-road vehicles may be permitted, and of areas in which the use of off-road vehicles is prohibited. Those regulations are to direct that the designation of such areas and trails be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. They also must require that such areas and trails:

(1) Be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails may be located in units of the National Park System only if NPS determines that off-road vehicle use will not adversely affect their natural, aesthetic, or scenic values.

The NPS regulation at 36 CFR 4.10(b) implements the E.O. and requires that routes and areas designated for ORV use be promulgated as special regulations and that the designation of routes and areas shall comply with 36 CFR 1.5 and E.O. 11644. It also states that such routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves. The final rule is consistent with these authorities, and with NPS Management Policies 2006, available at: *http://www.nps.gov/policy/MP2006.pdf.*

ORV Use at Cape Hatteras National Seashore

Following the establishment of the Seashore in 1937, beach driving was primarily for the purpose of transportation, not recreation. Because the area was sparsely populated, the number of ORVs on the beach was much smaller than it is today. The paving of NC Highway 12, the completion of the Bonner Bridge connecting Bodie and Hatteras islands in 1963, and the introduction of the State of North Carolina ferry system to Ocracoke Island facilitated visitor access to the sound and ocean beaches. Improved access, increased population, and the popularity of the sport utility vehicle have resulted in a dramatic increase in vehicle use on Seashore beaches.

Since the 1970s, ORV use at the Seashore has been managed through various draft or proposed plans. However, none were completed or published as a special regulation as required by 36 CFR 4.10(b). Motivated in part by a decline in most beach nesting bird populations on the Seashore since the 1990s, in July 2007 NPS completed the Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment (Interim Strategy) to provide resource protection guidance with respect to ORVs and other human disturbance until the long-term ORV management plan and regulation could be completed.

In October 2007, a lawsuit was filed by Defenders of Wildlife and the National Audubon Society against the NPS and the U.S. Fish and Wildlife Service challenging the Interim Strategy. The lawsuit alleged the federal defendants failed to implement an adequate plan to govern off-road vehicle use at the Seashore that would protect the Seashore's natural resources while minimizing conflicts with other users. It also alleged that the federal defendants failed to comply with the requirements of the E.O. and NPS regulations regarding ORV use. The lawsuit was resolved in April 2008 by a consent decree agreed to by the plaintiffs, the federal defendants, and the intervenors, Dare and Hyde counties and a coalition of local ORV and fishing groups.

ORV use is currently managed under the consent decree, which also initially established deadlines of December 31, 2010, and April 1, 2011, respectively, for completion of an ORV management plan/environmental impact statement (plan/EIS) and a final special regulation. The Cape Hatteras National Seashore ORV Management Plan/Draft Environmental Impact Statement (DEIS) was released to the public on March 5, 2010, and a 60-day public comment period followed, beginning on March 12, 2010. On December 20, 2010, the Cape Hatteras ORV Management Plan/Final Environmental Impact Statement (FEIS) was completed, and the NPS Southeast Regional Director signed the Record of Decision (ROD) choosing the NPS Preferred Alternative as the

Selected Action. The public was informed of the availability of the FEIS and ROD through notice in the **Federal Register** on December 28, 2010. The FEIS, the ROD, and other supporting documentation can be found online at the NPS Planning Environment and Public Comment (PEPC) Web site at *http://www.parkplanning.nps.gov/caha.*

In March 2011, the NPS notified the parties to the litigation and the U.S. District Court for the Eastern District of North Carolina (Court) that the final rule would not be completed by the original April 1, 2011, consent decree deadline. The Court has since issued two orders modifying the consent decree to extend the deadline for the effective date of the final rule which is now February 15, 2012.

Notice of Proposed Rulemaking

On July 6, 2011, NPS published a Notice of Proposed Rulemaking for the management of ORVs at Cape Hatteras National Seashore (76 FR 39350). On July 6, 2011, NPS also published the ''Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore'' online at the Seashore's public planning Web site at *http://www.parkplanning.nps.gov/caha.*

The proposed rule for off-road vehicle management was based on the Selected Action as described in the ROD for the FEIS. The proposed rule was available for public comment from July 6, 2011 through September 6, 2011. However, Hurricane Irene made landfall in the area of the Seashore on Saturday August 27, 2011, resulting in widespread damage along the Outer Banks of North Carolina and along the east coast into New England. Because the hurricane may have prevented some affected persons from commenting on the rule by the September 6 deadline, NPS reopened the public comment period on September 9, 2011, and extended the deadline to midnight on September 19, 2011.

Summary of and Responses to Public Comments

Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal at *http://www.regulations.gov.* A total of 21,302 comment documents were received. A summary of comments and NPS responses is provided below, followed by a table that sets out section-by-section the changes NPS has made from the proposed rule in this final rule based on the analysis of the comments.

1. *Comment:* By allowing ORV use at the Seashore, the proposed rule fails to meet the mandates of the Organic Act of preserving and protecting flora, fauna, historic objects, and scenery.

Response: NPS and the courts have consistently interpreted the Organic Act and its amendments as providing that resource conservation shall predominate over visitor recreation, in the event of a conflict between the two. However, the Organic Act gives NPS broad authority and discretion to manage these sometimes conflicting goals and to determine how visitor activities, including recreational activities, may be managed to avoid or minimize impacts to natural and cultural resources. The General Authorities Act, which amended the Organic Act, requires NPS to manage all units as part of a single National Park System for the purpose set out in the Organic Act. Other laws and policies also support NPS's decision to manage recreational use at the Seashore. The laws also give NPS the management discretion to allow impact to park resources and values when necessary and appropriate to fulfill the purposes of a park, as long as the impact does not constitute impairment of the affected resources and values. (NPS Management Policies 2006, Section 1.4.3)

2. *Comment:* By allowing ORV use on large portions of the Seashore, the proposed rule fails to comply with the Seashore's enabling legislation, which said that no plan for the convenience of visitors shall be undertaken that is incompatible with the preservation of the park's unique flora and fauna and physiographic conditions.

Response: The Seashore's enabling legislation states in 16 U.S.C. 459a–1 that ''the administration, protection, and development'' of the Seashore shall be exercised ''subject to the provisions of the NPS Organic Act.'' Accordingly, recreation must be managed in a manner to provide for resource conservation. NPS Management Policies require the NPS to manage activities in the park unit to avoid impairing resources, to avoid or minimize unacceptable resource impacts, and to strive to restore the integrity of park resources that have been damaged or compromised in the past.

The Selected Action, upon which the rule is based, is consistent with this mandate, and is also consistent with the enabling legislation's mandate to preserve the unique flora and fauna and physiographic conditions. Among other things, it specifically provides for actions to preserve sensitive and protected species during important lifecycle stages, thus ensuring their preservation.

3. *Comment:* Implementing ORV restrictions such as vehicle-free areas is in conflict with Section 3 of E.O. 11644 because these restrictions severely limit the variety of access opportunities available for visitors and increase the potential for conflicts among users in the areas that remain open to recreational use.

Response: Section 3 of E.O. 11644 states that the designation of ORV routes ''will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands.'' It does not address or restrict the designation of vehicle-free areas. Nonetheless, in the plan/EIS, NPS has sought to provide for a variety of access opportunities through the designation of ORV routes, as well as providing pedestrians with some vehicle-free areas. Part of the purpose of developing the plan/EIS, as stated in the FEIS, was ''to provide a variety of visitor use experiences while minimizing conflicts among various users,'' which the NPS believes the plan and rule have accomplished.

This rule designates more than half of the ocean beach mileage in the Seashore as seasonal or year-round ORV routes, in addition to 18 soundside access routes, providing a substantial amount of vehicular access. The remaining ocean beach and sound shoreline would be closed to ORV use, which provides a more primitive, vehicle-free visitor experience at the Seashore. The rule also includes measures such as carrying capacity restrictions, reduced speed limits, and parking requirements to reduce the potential for conflicts among Seashore visitors.

4. *Comment:* This regulation conflicts with E.O. 11644 and E.O. 11989, which allow the designation of ORV routes in areas of the National Park System only if the agency determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values. Driving on the beach clearly adversely impacts these values of the Seashore.

Response: The NPS interprets and implements the E.O. term ''adversely affect'' in a manner that is consistent with similar requirements in its NPS Management Policies 2006, under which NPS only allows ''appropriate use'' of parks, and avoids ''unacceptable impacts.'' This rule is consistent with those requirements. It will not impede the attainment of the Seashore's desired future conditions for natural and cultural resources as identified in the FEIS. This rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural

locations within the Seashore. Within the context of the resources and values of the Seashore, ORV use on the ORV routes designated by this rule (which are also subject to resource closures and other species management measures that will be implemented under the Selected Action in the ROD) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of the Seashore. Therefore, this rule is consistent with E.O. 11644 and E.O. 11989. A more detailed explanation of this determination is provided in the ''Compliance with Other Laws and Executive Orders'' section of this rule.

5. *Comment:* All ORVs should be banned within the Seashore.

Response: This rule implements the December 2010 ROD, which, following input from the public during development of the EIS, allowed for continued ORV use. ORV use is a historical use at the Seashore that has been accounted for in various planning documents, including the Seashore's 1984 General Management Plan, which states, ''Selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing in accordance with the existing use restrictions.''

Furthermore, prohibition of ORV use at the Seashore would not have met the stated purpose, need, and objectives of the plan/EIS. The purpose of the plan was to ''develop regulations and procedures that carefully manage ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural processes, provide a variety of visitor use experiences while minimizing conflicts among various users, and promote the safety of all visitors * * * .'' ORV use, if effectively managed, provides convenient access for many appropriate visitor activities at some popular beach sites including, for example, activities that use vehicles to transport substantial amounts of gear for the activity. Prohibition, rather than management, of ORV use could substantially diminish such visitor experience opportunities. Therefore, prohibiting all ORV use would not have met the need as described in the plan.

6. *Comment:* The proposed rule should refer to the Seashore as ''Cape Hatteras National Seashore Recreational Area'' because this is the name that was established through the enabling legislation. The name of the Seashore cannot be changed except by an act of Congress, and removing ''Recreational Area'' from the name changes the original purpose of the Seashore.

Response: On June 29, 1940, Congress amended the 1937 authorizing legislation for ''Cape Hatteras National Seashore'' to permit hunting. The same amendment also changed the formal title of the park to ''Cape Hatteras National Seashore Recreational Area,'' in order to distinguish it from more traditional types of parks where all hunting was generally prohibited, and avoid setting a precedent for other parks.

NPS had already defined a ''national seashore'' as a recreational area in its 1937 brochure explaining the Park, Parkway, and Recreational Study Act, and the anticipated recreational purposes of the park were established by Congress through Acting Secretary of the Interior Oscar L. Chapman's letter to the House Committee on Public Lands. Thus, including the term ''recreational area'' in the title was redundant.

In 1954, NPS authorized the original park name (''national seashore'') to be used for all administrative purposes except for formal memoranda and documents requiring the full legal name. Subsequently, the term ''recreational area'' fell from use in most official references to the park. In 1961, Congress authorized Cape Cod in Massachusetts as the second ''national seashore'' and subsequently created eight more ''national seashores'' between 1962 and 1975, for a total of ten. All such park units that followed Cape Hatteras were officially named ''national seashores.''

Since 1962, Cape Hatteras has been referred to as ''national seashore'' in all Congressional legislation and ''national seashore'' has been the standard nomenclature for this type of park. In any event, this nomenclature question is irrelevant to this rule and the ORV plan. The General Authorities Act of 1970 and the 1978 Redwoods Amendment expressly clarified that all units of the National Park System are to be managed to the same statutory standards and authorities. Furthermore, the NPS motor vehicle regulation at 36 CFR 4.10 does not recognize a ''national seashore recreational area'' unit designation as one of the types of units where ORV use is permitted.

7. *Comment:* The proposed rule violates E.O. 13132 by not providing a federalism summary impact statement.

Response: The proposed rule is consistent with E.O. 13132. It does not have federalism implications that require a federalism summary impact statement. The rule governs the use of federally owned land in the Seashore by individual Seashore visitors. It does not have a substantial direct effect on the State of North Carolina (or any other state), on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

8. *Comment:* The proposed rule violates E.O. 13474, which amended E.O. 12962, specifically section (d), which directs Federal agencies to ensure that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments * * * or any other relevant conservation or management areas or activities under Federal authority, consistent with applicable law. The ORV management plan harms recreational fishermen the most.

Response: E.O. 12962 (1995), as amended by E.O. 13474 (2008), directs Federal agencies, ''to the extent permitted by law,'' to improve the quantity, function, sustainable productivity and distribution of U.S. aquatic resources for increased recreational fishing opportunities. It further directs Federal agencies to ensure that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks or any other relevant conservation or management areas or activities under any Federal authority, ''consistent with applicable law.'' Numerous laws require NPS to conserve wildlife and other natural and cultural resources unimpaired for the enjoyment of future generations and to contribute to the protection and recovery of migratory birds and federally listed threatened or endangered species. As stated in Chapter 1 of the FEIS, these laws include the Organic Act, the Seashore's enabling legislation, the Migratory Bird Treaty Act, and the ESA. In addition, as discussed above, E.O. 11644 (1972), E.O. 11989 (1977), and NPS regulation 36 CFR 4.10, impose additional requirements on the management of ORV use, if it is allowed.

The proposed rule is ''consistent with applicable law'' and places no direct constraints on recreational fishing. Its focus is to authorize ORV use at the Seashore, manage it to protect and preserve natural and cultural resources and natural processes in accordance with applicable laws, and provide a variety of safe visitor experiences while minimizing conflicts among various users. To the extent that management of ORV use would impact fishing and other recreational uses of the Seashore, those impacts were analyzed during the preparation of the plan/EIS.

9. *Comment:* The proposed rule will negatively impact primitive wilderness within the Seashore and does not address Congress's goal of preserving ''primitive wilderness'' at the Seashore as directed in the park's enabling legislation.

Response: The Seashore's 1937 enabling legislation, which indicated that areas not developed for recreational uses ''shall be permanently reserved as a primitive wilderness,'' predates the Wilderness Act of 1964, which established the National Wilderness Preservation System and created a process through which Congress formally designates ''wilderness areas''. At this time, there are no such proposed or designated ''wilderness areas'' in the Seashore. The Seashore's enabling legislation authorizes NPS to provide infrastructure and facilities for visitors in selected areas, as needed to support recreational use (*e.g.,* parking areas, day-use facilities for beach-goers, lifeguarded beaches, boat launch areas, campgrounds, and ORV ramps), while leaving other areas undeveloped in order to retain their primitive character. The Seashore has many undeveloped areas that are preserved and further protected under the Selected Action and this rule. However, since none of these areas are currently designated or proposed wilderness, the ORV management plan/EIS did not address preserving wilderness under the 1964 Act. A study to explore the suitability of designating areas at the Seashore as wilderness is outside the scope of this planning effort and will be addressed during a future process to develop a new General Management Plan for the Seashore.

10. *Comment:* The exclusion of specific fixed-distance, mandatory buffers for wildlife and other natural resource protection in the proposed rule violates the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). By excluding those species protections from the rule, the proposed rule is outside the range of alternatives considered within the FEIS (and specifically the Selected Action, Alternative F, as detailed in the ROD) and has not undergone the ''hard look'' required by NEPA. By implementing this new alternative that was not studied in the FEIS, the proposed rule violates the APA's notice and comment requirements, and applicable E.O.s and regulations.

Response: The proposed rule is based directly on the Selected Action described in the FEIS and ROD. The rule contains those portions of the Selected Action, such as the designated ORV routes and other ORV management requirements, that NPS believes are necessary to comply with the E.O.s and NPS regulations. The species management strategies for the Selected Action, as described in the FEIS, are intended to evolve over time, through the periodic review process, in order to ensure accomplishment of the desired future conditions for park resources as stated in the plan. In response to these comments, NPS has revised the wording of § 7.58(c)(10) to more clearly articulate its commitment to the implementation of the species management strategies and periodic review process described in the Selected Action.

11. *Comment:* NPS and DOI are in violation of NEPA and the E.O.s because they did not publish the full extent of the proposed restrictions in the **Federal Register** and did not provide ample documentation, review time, and meetings or other forms of education for the public.

Response: Not every aspect of ORV management at the Seashore is appropriate for inclusion in this rule; this is why NPS developed an ORV management plan. As discussed above, NPS has already developed an ORV management plan and chosen its Selected Action in the ROD. (This Selected Action was the NPS Preferred Alternative in the FEIS.) As part of the NEPA planning process, the NPS published the DEIS, FEIS, and the ROD on the NPS PEPC Web site at *http://www.parkplanning.nps.gov/caha* prior to publishing the proposed rule.

This rulemaking process is governed by the APA and not by that NEPA process, which is now complete. As required by the APA, the NPS published the proposed regulation in the **Federal Register** (76 FR 39350) on July 6, 2011. As stated in that notice of proposed rulemaking, the purpose of the rule was to implement the Selected Action from the ROD. As required by the APA, the public has had the opportunity to review and comment on those aspects of ORV management that are actually being addressed in the regulation.

This public participation under the APA is in addition to the extensive public participation that has already occurred through the NEPA process and the negotiated rulemaking process. The public participation process is summarized on p. 27 of the FEIS and the expected impact of the proposed alternatives, including the various restrictions proposed in each alternative, is described in ''Chapter 4: Environmental Consequences,'' pp. 325–638 of the FEIS. A complete list of documents, public participation notices, and other information for the project has been and still is available on the NPS PEPC Web site at *http://parkplanning.nps.gov/caha.* (See ''Cape Hatteras National Seashore Off-Road Vehicle Negotiated Rulemaking and Management Plan/EIS'' project page, ''Document List.'')

The APA does not require an agency to conduct public hearings for this type of rulemaking process. However, as part of the NEPA process, the NPS:

- Conducted public informational meetings in February and March of 2007 during public scoping on the plan/EIS, conducted additional informational meetings in January and February 2008 to examine the range of alternatives and seek input on alternative elements;
- Accepted public comments each day during 20 days of negotiated rulemaking advisory committee meetings; and
- Conducted five public hearings during the public comment period on the DEIS, as described on p. C–1 of the FEIS.

The rule is based on the plan/EIS that was developed through this extensive public participation process.

12. *Comment:* The proposed rule does not adequately address the Migratory Bird Treaty Act, the ESA, or the Unfunded Mandates Reform Act (UMRA).

Response: The Selected Action in the ROD, which is the basis for this rule, gave extensive consideration to the protection of migratory birds and federally listed threatened or endangered species. The U.S. Fish and Wildlife Service also reviewed the FEIS and drafted a Biological Opinion which concurred with the NPS *Determination of Effect* on protected species and provided revisions that were included in the ROD. A detailed analysis of the impacts of the management alternatives on threatened or endangered species is provided in Chapter 4, pp. 347–491 of the FEIS. Please see the paragraph entitled Unfunded Mandates Reform Act in the ''Compliance with Other Laws and Executive Orders'' section of this preamble for explanation regarding consistency with UMRA.

13. *Comment:* The proposed rule makes no mention of the America's Great Outdoors Initiative.

Response: The America's Great Outdoors Initiative (AGO) is a program to encourage stewardship and recreational use of public lands. AGO vision statements include the following:

- All children, regardless of where they live, have access to clean, safe outdoor places within a short walk of their homes or schools, where they can play, dream, discover, and recreate. Americans participate in the shared responsibility to protect and care for our unique natural and cultural heritage for the use and enjoyment of future generations.
- Our national parks, national wildlife refuges, national forests, and

other public lands and waters are managed with a renewed commitment to sound stewardship and resilience.

• Our natural areas and waterways, whether publicly or privately owned, are reconnected, healthy, and resilient and support both human needs and the wildlife that depend on them.

AGO does not provide specific guidance related to NPS ORV management decisions and does not supersede or modify the laws, regulations, and E.O.s that apply to ORV management at the Seashore.

The rule is necessary to implement the Selected Action identified in the ROD, to bring the Seashore in compliance with the E.O.s and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to Seashore resources and values. Under the Selected Action, NPS will provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, with controls or restrictions in place to limit impacts on sensitive resources. NPS believes implementation of this rule will be consistent with AGO's vision of stewardship and appropriate recreational use of public lands.

14. *Comment:* Subjecting vehicles to search and inspection for equipment and requiring individuals to partake in an in-person education program to obtain a permit violates E.O. 12988 (Civil Justice Reform).

Response: As described in the ''Compliance with Other Laws and Executive Orders'' section of this preamble, the provisions of this rule are consistent with E.O. 12988. Note, however, that E.O.12988 generally applies only to civil matters, and violations of this regulation, as with other NPS regulations, would be criminal matters to which this E.O. does not apply.

15. *Comment:* The rule does not comply with the following:

• Regulatory Flexibility Act. There was not adequate consideration given to economic impacts, both direct and indirect, nor to cumulative impacts of small businesses on the islands.

• Antideficiency Act. The rule makes forward looking statements about infrastructure improvements which NPS claims will lessen the economic impacts. There are no funds in the NPS appropriated budget to pay for these improvements.

• Architectural Barriers Act of 1968. A large number of those submitting comments on the DEIS specifically expressed concerns about people with disabilities and others who are unable to walk long distances and would no longer be able to enjoy the Seashore.

Response: Under 5 U.S.C. 605(b), the Regulatory Flexibility Act permits an agency to certify that a proposed rule would not have a significant economic impact on a substantial number of small entities, if the preliminary analysis supports such a decision. NPS performed the required economic analysis and provided the above certification in the proposed rule. NPS provided the Office of Management and Budget (OMB) with the proposed rule before publication in the **Federal Register**. OMB reviewed and commented on the rule, and approved its publication, indicating that it was consistent with applicable regulatory requirements under its purview.

NPS has included infrastructure and access improvements as an integral part of the ORV plan and regulation, and anticipates that funding for construction of the improvements will come from appropriated NPS program funds such as ''Line Item Construction,'' ''Repair and Rehabilitation,'' or from the Seashore's recreation fees, or from grants. Consistent with the Antideficiency Act, no funds have been obligated or expended for this purpose in excess of appropriations or in advance of their receipt.

The Architectural Barriers Act of 1968, as amended, 41 U.S.C. 4151 *et seq.,* imposes standards on buildings constructed under several types of federal nexus. The rule, which designates routes for ORV use, does not require the construction of any buildings, so the Act does not apply.

16. *Comment:* NPS has failed to adequately address or even recognize the economic impact of the rule. The Region of Influence (ROI) is incorrectly identified. Analysis at the county-wide level masks the impacts that would occur in the Seashore villages, and northern communities such as Kill Devil Hills and Southern Shores should not be included in the ROI.

Response: To gather data for the socioeconomic analysis, NPS conducted a survey of businesses in the Seashore villages and in Kill Devil Hills, Nags Head, and Kitty Hawk. In the business survey, some of the businesses in the three villages north of the Seashore reported that beach closures to ORVs would affect their revenue and would cause revenue losses in the future, so it is not inaccurate to include these communities in the ROI. However, it is true that other businesses in the three northern communities reported that ORV restrictions would have no impact on their business. Since some businesses in the three northern communities reported impacts in the survey, NPS felt it was important to include those in the analysis. To estimate the portion of the economic output in Dare and Hyde counties generated in the ROI, and, within the ROI, the amount generated in the Seashore villages, NPS adjusted the county-level values by the percentages of employment by business section. NPS fully agrees that the impacts will fall mainly on the Seashore villages. For this reason, NPS reported the range of revenue impacts used to calculate the impacts for each alternative separately for the Seashore villages and the rest of the ROI. To measure the economic impacts of the alternatives, NPS used ''IMPLAN,'' a computer software program that simulates how changes in sales and employment in one industry can affect other industries and the regional economy as a whole. Although the results from running the IMPLAN model are presented at the county level, the discussion of each alternative stated that the Seashore villages would experience the majority of the direct impacts. In the discussion of the impacts on small businesses, NPS stated that the impacts will be larger for businesses that depend on visitors who use particular beach access ramps or visit particular beaches that will be closed or restricted under the alternative. The conclusion for each alternative reiterated that the Seashore villages will experience the majority of the impacts and that small businesses may be disproportionately impacted. The analysis forecasts higher adverse impacts on the small businesses than for the ROI as a whole.

In initial meetings shortly before the negotiated rulemaking committee was officially formed and in early meetings with the committee, NPS was told that the economic impacts would be widespread. Members of the local community urged NPS to consider the impacts on Dare County, the State of North Carolina, and neighboring states. NPS chose to narrow the ROI to just the island portions of Dare and Hyde counties, and assessed the resulting indirect and induced impacts on Dare and Hyde counties as a whole.

NPS released the results of these studies and updated relevant sections of the FEIS to reflect them. It is an acceptable NEPA planning practice for newly available results of studies that were not available at the time a DEIS is written to be incorporated in the FEIS. NPS would have prepared a supplemental DEIS for review if there was significant new information relevant to environmental concerns and bearing on the proposed action and its impacts (40 CFR 1502.9(c)(1)(ii)). In this case, however, the study findings were

consistent with the analysis already provided in the DEIS.

17. *Comment:* The economic analysis for the proposed rule is flawed because it does not address the ''ripple effect'' to the local economy and is based on faulty assumptions about visitor spending.

Response: NPS obtained relevant data for impact analysis using IMPLAN, an economic model that specifically calculates the ''ripple effect'' that changes in direct spending by visitors have on other sectors of the economy. According to generally accepted economic theory (Boardman, 1996), these ripple effects should be included in benefit/cost analyses only if they are large enough to change prices in affected markets. Although NPS had no information about possible changes in prices, NPS chose to err on the side of representing all relevant impacts and included these ripple effects in the analysis of impacts. Therefore, NPS believes its analysis of these ripple effects is adequate.

18. *Comment:* Since the proposed rule raised OMB legal or policy issues, OMB may also have concerns about the rulemaking process.

Response: As required by federal regulatory procedures, before NPS published the proposed rule in the **Federal Register**, OMB reviewed the proposed rule and the ''Benefit-Cost Analysis of Proposed ORV Use Regulations at Cape Hatteras National Seashore'' and approved the publication of the proposed rule. OMB also reviewed the final rule and the ''Benefit-Cost Analysis of Final ORV Use Regulations at Cape Hatteras National Seashore'' and approved the final rule for publication in the **Federal Register**.

19. *Comment:* The ORV permit requirements should require approval by OMB.

Response: The NPS special park-use permit program allows for a variety of activities including, but not limited to, ORV use, special events, recreational activities, commercial filming and agricultural use, to be authorized through a permit. The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that OMB review and approve forms used by agencies to collect information used by the Superintendent to make an informed decision whether to approve or deny a permit request. OMB has approved NPS use of application forms until June 2013 and issued an approval number of 1024–0026. Prior to their expiration, NPS will initiate the renewal process, which will include publishing a **Federal Register** notice soliciting public comments on the current applications.

20. *Comment:* The public was denied opportunities to comment on the economic impact analysis, including the benefit-cost analysis, during the ORV management planning and rulemaking processes.

Response: The DEIS, which was developed and open to public comment through the NEPA process, contained a socioeconomic impact analysis of the proposed management alternatives (Chapter 4, pp. 561–568). The DEIS was open to public review and comment for 60 days, during which NPS received numerous comments on the analysis. A separate report titled ''Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore'' was prepared, as required, for the proposed rule and posted online at *http://www.parkplanning.nps.gov/caha,* on July 6, 2011, the same date the proposed rule was published in the **Federal Register**. The public's opportunity to comment on the proposed rule included the ability to comment on the benefit-cost analysis and other documents and studies that were used to form the basis for the rule.

21. *Comment:* The small business survey conducted for the proposed rule was not completed and published before the public comment period, and therefore there was insufficient time for public review and comment. Several local businesses were never consulted or contacted and the estimates are based upon flawed sample data.

Response: NPS contracted with RTI International to conduct a small business survey to provide information for the preparation of the FEIS. A representative cross-section of businesses was surveyed, but not all businesses. This is standard methodology for such a survey. RTI also conducted a survey of Seashore visitors and conducted counts of vehicles using the ocean-side beach access ramps and counted visitors using selected beaches at the Seashore. The results of these studies were incorporated into the plan/FEIS, and the reports were made available to the public on December 23, 2010 when they were posted on the RTI Web site at *http://rti.org/publications/publications.cfm* and on the NPS PEPC Web site at *http://www.parkplanning.nps.gov/caha.* The Seashore issued a press release on December 23, 2010, announcing the availability of these reports. It is not unusual for newly available results of studies that were not available at the time a DEIS is written to be incorporated into the FEIS. The NPS would have prepared a supplemental EIS (with an accompanying public comment period) for review if there was significant new information relevant to environmental concerns and bearing on the proposed action and its impacts (40 CFR 1502.9(c)(1)(ii)). In this case, however, the study findings did not provide significant new information and were consistent with the analysis provided in the DEIS. Therefore, a supplemental EIS was not prepared. The public was given the opportunity to comment on any completed studies or data used in the planning process during the public comment periods for the DEIS and the proposed rule.

22. *Comment:* The economic impact requirement of $100 million is not a fair measurement for the area and should be decreased based on the area to which the proposed rule will apply.

Response: Under E.O. 12866, agencies are required to submit an economic analysis of certain ''significant'' regulations to the OMB. E.O. 12866 establishes a number of different criteria under which a regulation is determined to be ''significant''. The economic impact threshold level of $100 million for analyzing impacts of the rule is one of those criteria. Another criterion for determining that a regulation is ''significant'' for purposes of triggering OMB review under the E.O. is whether a regulation raises novel legal or policy issues. This rule was determined to be significant because it was determined that it raised novel legal or policy issues. The $100 million threshold was not the basis for which this rule was reviewed under Executive Order 12866 and had no impact on the level of analysis and review that this rule received.

23. *Comment:* The economic impact analysis is flawed because there is limited information regarding the number of vehicles or visitors that accessed the Seashore before increased access restrictions, which began in 2003, several years before the Interim Strategy. Without information before 2003, the baseline assessment is skewed.

Response: Reliable data on the number of ORVs using Seashore beaches before 2003 was not available and is not directly relevant to this study. As part of the NEPA planning process, NPS developed a set of alternatives for management of ORVs in the Seashore that included two no-action alternatives (the Interim Strategy and the consent decree) and four action alternatives, and identified Alternative F as the NPS Preferred Alternative in the plan/EIS. The Interim Strategy was implemented in 2006–2007 and the consent decree was implemented in 2008–2010, while the plan/EIS was being developed. These no-action alternatives

implemented in 2006–2010 serve as the baseline for comparison of the action alternatives, including the NPS Selected Alternative F that is the basis for this rule. Section 2.3 of the ''Benefit-Cost Analysis of Proposed ORV Use Regulations in Cape Hatteras National Seashore'' describes how NPS evaluated visitation and ORV use information for the range of management alternatives considered in the plan/EIS. NPS believes that the methodology and information sources described in the benefit-cost analysis provide an adequate basis for assumptions about baseline visitation.

24. *Comment:* The ecosystem and the associated tourism play an important role in the economy of the Seashore. Protection of this environment would be beneficial to the Seashore's economy.

Response: While the economic analysis of this rule did not quantify potential benefits from the protection of the Seashore's ecosystems and the environment resulting from the proposed actions, the FEIS did account qualitatively for these benefits, which were considered in choosing the NPS Preferred Alternative as the Selected Action in the ROD, upon which this rule is based.

25. *Comment:* The four areas of the Seashore that the North Carolina Beach Buggy Association had proposed as potential Traditional Cultural Properties (TCPs) were not considered by NPS during the ORV management planning and rulemaking processes. The National Historic Preservation Act (NHPA) of 1966 requires Section 106 review as part of the NEPA process.

Response: As required by Section 106 of the NHPA, NPS consulted with the North Carolina Department of Cultural Resources, State Historic Preservation Office (SHPO), during the NEPA process. The SHPO sent a letter to the Seashore on April 6, 2010, which indicated that it had reviewed the DEIS under Section 106 of the NHPA, that it was aware of ''no historic resources which would be affected by the project,'' and that it had no comments. The Seashore has also completed a number of studies meant to identify historic resources, including a Historic Resource Study, an Ethnohistorical Description of the Eight Villages Adjoining Cape Hatteras National Seashore, and an Ethnographic Study Analysis of Cape Hatteras National Seashore. While preparing the plan/EIS, NPS determined the areas ineligible as TCPs and provided its determination to the SHPO, which offered no opinion.

26. *Comment:* It was not necessary for the NPS to consult with the Tuscarora Indian tribe since Tribal members never lived at Cape Hatteras.

Response: The Presidential Memorandum of April 29, 1994 and E.O. 13175 on Consultation and Coordination with Indian Tribal Governments require NPS to maintain a government-to-government relationship with federally recognized tribal governments. In this case, the Seashore is mandated to consult with the Tuscarora Indian Tribe, since it is the only federally recognized tribe affiliated with the Seashore.

27. *Comment:* Since Pea Island is technically owned by the NPS (although controlled by U.S. Fish and Wildlife Service), it should be included as a vehicle-free area in the Seashore.

Response: Pea Island National Wildlife Refuge (Refuge) is administered by the U.S. Fish and Wildlife Service, and NPS does not direct the management of visitor use at the Refuge. Therefore, NPS regulations (including the designation of ORV routes) do not apply at the Refuge.

28. *Comment:* The proposed rule does not reflect the will of the people that was expressed during the public hearings and comment period for the DEIS. A large percentage of the people who spoke during the public comment period preferred that ORV and pedestrian access take priority over resource protection. Why were those numbers not considered more in the proposed rule?

Response: While the majority of the members of the public who spoke at the DEIS public hearings supported ORV access over resource protection, statements made at the hearings represent only a subset of the over 15,000 pieces of correspondence that NPS received on the DEIS. Under NEPA, all comments are considered with equal weight, regardless of whether they were handwritten, electronic, or spoken.

NPS received thousands of comments supporting increased ORV access and thousands calling for increased resource protection with greater restriction of ORV use than NPS had proposed. Although NPS reviewed and considered these comments and made changes to the Preferred Alternative based on them, the decision to revise the Preferred Alternative was based on the substance and merit of the comments, not merely the number of comments received. The NPS must base its decision on applicable legal authorities and policies, available scientific information, and other substantive concerns, not the relative popularity of one alternative over another. These changes were subsequently reflected in the FEIS and the Selected Action in the ROD, which formed the basis for this rule.

29. *Comment:* NPS should not accept form letters orchestrated and submitted by advocacy groups or comment letters on the proposed rule that failed to comply with NPS requirements that all comments include the agency name and the Regulation Identifier Number (RIN) in the body of the comments.

Response: The purpose of emphasizing the use of the identification information was to ensure that comments made their way to the appropriate place for consideration, analysis, and response. The agency name and RIN information were automatically included in all comments that were received through the Federal eRulemaking Portal at *http://www.regulations.gov*. Comments that were mailed or hand delivered to the Seashore in accordance with the stated deadlines were accepted with or without the RIN, as long as they were clearly applicable to the proposed ORV rule at the Seashore.

30. *Comment:* Supporting documents, public comments, and transcripts of public hearings should have been added to the public docket posted at *http://www.regulations.gov,* as they contain information relevant to the proposed rule.

Response: The proposed rule was based directly on the Selected Action identified in the ROD, which was developed through the NEPA process. As stated in the July 6, 2011, **Federal Register** notice for the proposed rule, the FEIS, the ROD, and other supporting documentation can be found online at *http://www.parkplanning.nps.gov/caha* and are part of the public record for the plan/EIS.

31. *Comment:* NPS should create an advisory committee of local residents, ORV representatives, and local officials to work with NPS in determining future resource closures, dates for seasonal ORV restrictions, ORV route boundaries, and other ORV management matters.

Response: Creating a standing ORV management advisory committee under the Federal Advisory Committee Act (FACA) was considered but dismissed as a reasonable alternative during the preparation of the plan/EIS. Section 2(b)(2) of FACA restricts the establishment of such committees to situations ''when they are determined to be essential.'' The NPS does not believe a standing advisory committee is essential because this rule, once established, will provide the framework for ORV management at the Seashore.

When NPS did establish a negotiated rulemaking advisory committee to assist NPS in developing alternatives for the

ORV management plan and rule, the committee represented a wide range of interests, and accordingly their points of view were often contradictory. That committee was unable to reach consensus on the matters before it. Therefore, due to the extremely polarizing nature of ORV use at the Seashore, there would be a strong probability that a similar ORV management committee would not be able to provide NPS with clear and consistent actionable advice, and managing the committee would require a commitment of staff time and funding that could not be sustained over the life of the plan.

32. *Comment:* The comment period should have been extended 30 to 60 days because of Hurricane Irene.

Response: The 60-day public comment period for the proposed rule opened on July 6, 2011, and closed on September 6, 2011. With 11 days remaining in the comment period, Hurricane Irene struck the Outer Banks area early on Saturday, August 27, 2011. Thousands of public comments had been received before the hurricane reached the Outer Banks. On September 9, 2011, NPS published a **Federal Register** notice announcing it would reopen the public comment period until September 19 to allow more time (*i.e.,* 13 more days) for those who may have been affected by Hurricane Irene to submit comments. NPS acknowledges that many Outer Banks residents, property owners, and businesses were impacted by Hurricane Irene, and believes that reopening the comment period for the length of time described above was an appropriate response to the circumstances.

33. *Comment:* Numerous commenters proposed various changes to the designated routes, including adding more year-round vehicle-free areas or increasing vehicular access to popular fishing areas.

Response: Comments on designated ORV routes in the proposed rule were nearly identical to those received on the DEIS. While finalizing the FEIS, NPS thoroughly considered these comments and made revisions to the NPS Preferred Alternative, which was the Selected Action in the ROD and formed the basis for this rule. NPS believes this process has identified an equitable balance of vehicle-free areas and ORV routes that provides for both resource protection and a variety of visitor experiences. Further information on how NPS considered and designated routes and areas can be found in the FEIS (p. C–115).

34. *Comment:* NPS should reduce the size of the buffer distances used to protect beach nesting wildlife so that closures are smaller and recreational access is allowed along the shoreline past the nesting areas.

Response: Resource closures are established to provide each protected species with access to key habitat during critical points in its annual cycle. As described in the FEIS, the buffer distances are intended to provide adequate protection to minimize the impacts of human disturbance on nesting birds and chicks in the majority of situations, given the level of visitation and recreational use in areas of sensitive wildlife habitat at the Seashore and issues related to noncompliance with posted resource protection areas.

The buffer distances were developed after consideration of the best available science, which includes existing guidelines and recommendations, such as the Piping Plover Recovery Plan (USFWS 1996a) and the U.S. Geological Survey (USGS) Open-File Report 2009–1262 (2010), also referred to as the ''USGS protocols,'' on the management of species of special concern at the Seashore, as well as relevant scientific literature (research, studies, reports, *etc.*). In addition, buffer distances were developed using the practical knowledge gained by NPS resources management staff during two years of implementing the Interim Strategy (2006–2007) and three years implementing the consent decree (2008–2010).

35. *Comment:* The Selected Action, Alternative F, was biased toward environmental concerns, rather than recreation.

Response: The Selected Action, as described in the ROD, includes the combination of ORV routes and requirements and species management strategies that best addresses the stated purpose, need, and objectives of the plan/EIS. NPS is obligated under its Organic Act and the Seashore's enabling legislation to ensure that the Seashore's beach nesting wildlife species are sufficiently protected from the impacts of ORV use and human disturbance to ensure that those species are conserved and remain unimpaired for the enjoyment of future generations.

As stated in NPS Management Policies 2006, Section 1.4.3, Congress recognizes that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired. Congress has therefore provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to predominate. This is how courts have consistently interpreted the Organic Act.

36. *Comment:* The species protection measures are based on incomplete science such as the ''USGS protocols,'' which are not peer reviewed science.

Response: NPS guidelines require that all scientific and scholarly information disseminated to the public in any format meets the requirements of NPS Director's Order 11–B: *Ensuring Quality of Information Disseminated by the National Park Service,* which may require peer review for activities and information used in the decision-making process. However, there is no requirement that all information used in a NEPA document be peer reviewed.

The FEIS does not state that the USGS protocols are the primary source of information used in the plan. NPS used a multitude of sources in the development of the species protection strategies contained in the FEIS, in addition to the professional experience of Seashore staff implementing various species management measures under the Interim Strategy and the Consent Decree.

As noted in the References section of the FEIS, the majority of the research that was relied upon was from peer-reviewed journals and official agency publications, such as the U.S. Fish and Wildlife Service species recovery plans. However, NPS did review and incorporate the results of several studies that were completed by university researchers as part of their graduate theses or doctoral dissertations, as many of these research projects involved species found at the Seashore and also occurred in similar coastal or barrier island ecosystems.

NPS believes the FEIS contains information of maximum quality, objectivity, utility, and integrity and is therefore in compliance with the Information Quality Act and the OMB, DOI, and NPS policies and guidelines that address the Act.

37. *Comment:* The definition of *ORV corridor* in the proposed rule does not sufficiently protect wildlife. The definition in the proposed rule has the effect of setting aside far more area for driving than it did in the FEIS, when it was clearly modified by the establishment of Species Management Areas.

Response: The NPS has revised the definition of *ORV Corridor* in the final rule to better describe the physical boundaries of the ORV corridor on the beach and to ensure that the definition is consistent with the intent of the language in the FEIS and ROD, thereby providing a sufficient level of wildlife protection. Instead of using Species

Management Areas (SMAs), the NPS revised the Preferred Alternative (FEIS p. 79–80) and the resulting Selected Action in the ROD to provide more intensive monitoring and response to changes in bird activity rather than less intensive monitoring with larger and longer-lasting closures. The purpose of this change was to simplify the plan and to lessen the amount of time that designated ORV routes would be affected by resource closures, while still providing sufficient protection for wildlife, especially during critical life stages.

38. *Comment:* There should be corridors to provide access through and around areas of resources closures. The Selected Action, Alternative F, will result in less shoreline available for recreation, resulting in crowding and user conflict.

Response: During public comment on the DEIS, some commenters recommended providing a corridor through all species resource closures and buffers. A buffer or resource closure is an area surrounding a sensitive resource, such as bird nests or chicks, which is closed to visitor access during critical life cycle stages to reduce human disturbance and the risk of mortality due to pedestrians and ORVs. Any passages, corridors, or pass-throughs that cut directly across or through a resource closure would essentially undermine the biological function of the closure and could render it compromised, perhaps even useless, to the species it is meant to protect, particularly if all buffers were to include ORV corridors. Therefore, including an ORV corridor through resource closures was not included in the range of alternatives, as it would violate the mandate to conserve wildlife and other park resources under the Organic Act, the Seashore's enabling legislation, the E.O.s on ORV management, and 36 CFR 4.10.

39. *Comment:* Vehicle traffic should be routed around nesting sites using established roads in order to avoid impacts to wildlife.

Response: The FEIS calls for the use of species-specific buffer distances to minimize human disturbance and protect nesting areas. In many cases, the buffer, once established, will preclude access along the beach adjacent to a nest site, particularly if the beach is narrow. However, in some cases, such as on a wide beach or inlet spit, there may be sufficient distance between the nesting area and the shoreline to allow continued access when the prescribed buffers are implemented. When shoreline access is temporarily closed to protect a particular nest site, ORV traffic will be able to continue to use open routes, which connect to established roads, in order to access other locations that are open to ORV use.

40. *Comment:* The required training and ORV permits should be available at multiple locations and online, not just ''in person'' as indicated in paragraph 7.58(c)(2)(v). Requiring the education to be obtained ''in person'' could cause undue delays for visitors, especially when there is a high influx of visitors. Once an individual has completed the education program, they should not have to complete the education program again in the following year(s) or weeks, if renewal of a weekly permit is desired.

Response: The NPS has modified paragraph 7.58(c)(2)(v) of the rule by removing the ''in person'' language to provide the Superintendent with greater flexibility for administering the ORV permit issuance procedures. The objective of the education program is to ensure ORV operators know the rules and to improve compliance with ORV and resource protection requirements.

NPS will initially require that all permit applicants take the education program in person in order to ensure completion of the program, and applicants will be required to take the education program annually for annual permits, or once per year if an applicant obtains one or more 7-day permits in a year, assuming the applicant has committed no violations since last taking the education program. Through the periodic review process, the NPS will evaluate the effectiveness of the education program in achieving its objectives and could at some point, if appropriate, consider changes in the delivery method or frequency of the education requirement.

41. *Comment:* The Seashore should require education for all visitors, not just ORV users.

Response: The education requirement in the rule applies specifically to persons applying for an ORV permit, as NPS believes that the education program will improve compliance with the ORV regulations. As indicated in Table 8 of the FEIS, NPS will also develop a new voluntary (*i.e.* not mandatory) resource education program targeted toward pedestrian beach users.

42. *Comment:* NPS should consider alternatives to a permit fee, including alternative ways for the park to generate revenue, such as collecting tolls at the Seashore. If ORV users are going to be charged a user fee, then all visitors should have to pay a fee.

Response: While preparing the plan/EIS, NPS considered a variety of alternative elements related to ORV permits and fees and then considered public comments on the issue before determining the Selected Action in the ROD. The idea of an entrance fee for the Seashore was discussed thoroughly during the negotiated rulemaking process and was dismissed primarily due to administrative and financial obstacles.

Establishing an entrance fee would require NPS to install and staff entrance gates in the Seashore to collect entrance fees. NPS would then need to accommodate thousands of local residents that need to travel through the Seashore to gain access to their property. The logistics of collecting entrance fees from all visitors would result in delays at entrances and would restrict travel along NC–12. In addition, the Seashore would only be able to retain a portion of the entrance fees collected and generally those funds are not available to support key functions associated with an ORV management program, such as law enforcement, maintenance of routes or parking lots, or resource management. The fee paid for a Seashore ORV permit will be collected and retained under the NPS special park uses cost recovery authority to support the various ORV management program functions.

43. *Comment:* Outer Banks residents should not be required to obtain an ORV permit, or at least should not have to pay a fee.

Response: As a unit of the National Park System, the Seashore is open on an equal basis to all members of the public, regardless of where they live. Therefore, the cost of ORV permits would be the same for all ORV users and would not vary based on their place of residence. Additional information on how the permit system would be administered and what fees would be used for can be found in the FEIS (p. C–70).

44. *Comment:* ORV permits should be issued to individuals rather than vehicles.

Response: The option of issuing a permit to the person that would be usable in any vehicle was considered during the development of the plan/EIS, but eventually eliminated. Tracking and verifying that people have ORV permits when the permits are movable between multiple vehicles would require substantially more effort by NPS law enforcement staff. Therefore, to provide the most efficient method for enforcing the permit system, NPS has revised the wording in paragraph (c)(2) of the rule to make it clear that the permit is issued to the individual for a specific vehicle and the ''proof of permit,'' such as a windshield sticker or a hang-tag issued by NPS, must be affixed to that vehicle for use off-road.

45. *Comment:* The ORV permit should not be based on the calendar year, but instead permits should be valid one year from the issue date. Other commenters suggested that the ORV permit be issued for two weeks, similar to the North Carolina recreational saltwater fishing license.

Response: While developing the plan/EIS, NPS considered a variety of options for year-long permits, which included an option for permits that would be valid for one year from the issue date, as well as various options for short-term permits. Based on simplicity, operational efficiency, and visitor convenience, the decision was made to provide visitors with two permit options: annual permits, valid for the calendar year; and 7-day permits, valid from date of purchase.

46. *Comment:* The proposed price range for the ORV permit is too high and will discourage use.

Response: The price for the ORV permit will be based on a cost-recovery system and is not designed to be prohibitive. As a cost recovery program administered under NPS Director's Order 53, the actual price of the ORV permit will be determined by the cost to NPS to implement the ORV management program divided by the estimated number of permits to be sold.

Based on prices at Cape Cod and Assateague Island National Seashores for similar types of permits, it is reasonable to expect the price of an annual ORV permit at Cape Hatteras to be $90–$150 and the price of a weekly permit to be approximately 33%–50% of the annual price (up to 50% if the annual price is lower in the price range; as low as 33% if the annual price is higher in the price range).

47. *Comment:* After paying for a permit, people may not be able to access their preferred area of the Seashore due to resource closures or carrying capacity restrictions.

Response: Obtaining an ORV permit allows a visitor to operate the permitted vehicle on designated ORV routes, but does not guarantee access to all routes all the time. Certain areas of the Seashore may also be closed to ORV access for resource protection during breeding and nesting season for protected species. During peak use periods, such as summer weekends and holidays, there could be occasions where certain popular areas at the Seashore reach their established carrying capacity limit, precluding additional ORV use until a number of vehicles leave the particular area.

While it is true that some popular ORV areas will be inaccessible at certain times during the year, past experience indicates that substantial sections of the beach designated as ORV routes would remain open for ORV use when other sections are temporarily closed.

48. *Comment:* There should be lower fees for less polluting vehicles.

Response: As discussed previously, the price of the ORV permit fee is determined by how much it costs NPS to implement the ORV management plan. Although low emission vehicles are less polluting, they still require the same effort and level of management as standard vehicles. Therefore, offering a reduced fee for low emission vehicles would not meet the NPS goal of recovering the costs of administering the ORV management program.

49. *Comment:* The legality and cost of the NPS inspection and equipment requirements are questionable.

Response: As part of the special regulation, NPS has the authority to develop vehicle and equipment requirements associated with issuance of an ORV permit. Much like state vehicle inspection requirements, Seashore law enforcement personnel may inspect ORVs to ensure compliance with the vehicle requirements contained in the rule. NPS will not randomly search permitted ORVs for required equipment. However, ORV operators must be able to demonstrate compliance with vehicle and equipment requirements upon request.

NPS developed these equipment requirements, which are similar to ORV equipment requirements at other seashore parks, in order to provide for visitor safety and reduce incidences of vehicle strandings. The equipment requirements contained in the rule are minimal and are generally items that most drivers already have in their vehicles. Accordingly, the cost of these items would be negligible.

50. *Comment:* Low speed vehicles, golf carts, or electric vehicles should be allowed.

Response: Under the proposed rule, only vehicles registered, licensed, and insured for highway use and that comply with inspection regulations within the state, country, or province where the vehicle is registered are allowed to operate on the Seashore. While low speed vehicles or neighborhood electric vehicles may be authorized for local use in certain areas, they generally are not registered, licensed, or insured for highway use, and therefore will not be permitted to be used on the Seashore.

51. *Comment:* NPS should clarify what it means in paragraph (3)(v) by requiring a ''jack stand'' be carried. Jack stands are typically used in an automotive repair shop.

Response: NPS concurs with this comment and has revised paragraph (c)(3)(v) of the rule to use the phrase ''jack support board,'' rather than ''jack stand.'' The purpose of the board is to place it under the jack so the jack does not sink into the soft sand if the vehicle operator is attempting to raise the vehicle to change a tire on the beach.

52. *Comment:* Paragraph (6) of the rule should be clarified to indicate that trailers with sleeping, cooking, and bathroom facilities are excluded.

Response: NPS generally concurs with this suggestion; however, NPS believes that trailers with only cooking facilities, such as a grill, are appropriate for beach use. Since camping on Seashore beaches is prohibited, the intent is to preclude the use of trailers that could contribute to violations of the camping prohibition. NPS has revised paragraph (c)(6) of the rule to state as follows: Towing a travel trailer (*i.e.* a trailer with sleeping and/or bathroom facilities) off-road is prohibited.

53. *Comment:* Additional modes of alternative transportation should be included in the rule.

Response: Alternative transportation is outside the scope of the rule; however, as described in the FEIS under Alternative F, transportation strategies such as shuttles and buses could be considered (p. 80). According to the ROD, NPS would consider applications for commercial use authorizations to offer beach and water shuttle services and would apply for funding to conduct an alternative transportation study to evaluate the feasibility of alternative forms of transportation to popular sites.

54. *Comment:* In paragraph (7)(iii), special-use permits for mobility impaired individuals should be valid for all vehicle-free areas, not just in vehicle-free areas in front of villages.

Response: Vehicle-free areas were designed to provide areas for a ''vehicle-free'' experience for park visitors and to provide for resource protection for wildlife. There are many opportunities for mobility impaired visitors to use an ORV for beach access on the designated ORV routes outside of the vehicle-free areas. For mobility impaired visitors who specifically wish to join others that have gathered on foot on a village beach, the special-use permit option is also provided.

55. *Comment:* In paragraph (7)(iii), the requirement that the vehicle must return to the designated ORV route or Seashore road immediately after the transport raises significant safety concerns and is unreasonable. What if the person needs to leave the beach quickly due to weather or health issues?

Response: NPS concurs that the vehicle removal requirement in paragraph (c)(7)(iii) of the proposed rule may create safety concerns or be unreasonable under certain circumstances. NPS revised the wording in the rule to eliminate the vehicle removal requirement and to state that special-use permits are subject to the resource, safety, and other closures implemented under § 7.58(c)(10), and may only be used in a manner consistent with the terms and conditions of the permit.

56. *Comment:* Vehicular access should only be allowed for mobility impaired visitors.

Response: ORV use, if effectively managed, provides convenient access for many appropriate visitor activities at some popular beach sites including, for example, activities that use vehicles to transport substantial amounts of gear for the activity. Allowing only mobility-impaired visitors to operate vehicles on ORV routes would essentially preclude vehicular access for the majority of ORV users at the Seashore.

As noted above, this rule implements the ROD which allows for continued ORV use. Allowing ORV use only by mobility-impaired visitors would not have met the purpose, need, and objectives of the plan/EIS. This approach would also have been inconsistent with the Seashore's 1984 General Management Plan which states that ''selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing in accordance with the existing use restrictions.''

57. *Comment:* The proposed rule makes no mention of the Americans with Disabilities Act (ADA). Special-use permits should be issued to anyone who possesses a legally registered handicapped sticker from their state.

Response: The Rehabilitation Act, 29 U.S.C. 791 *et seq.,* applies to Federal agencies in lieu of the ADA, and NPS is required to provide reasonable access to programs and services at the Seashore. ''Reasonable'' does not necessarily mean ''total'' and must be viewed in the light of the entire program or activity, including its purpose (*i.e.,* providing the visitor with a variety of experiences).

In developing the plan/EIS and rule, NPS recognized that visitors to the Seashore have different needs, and therefore provided that:

- ORVs are allowed on designated routes for those visitors who feel they may require a vehicle to be readily available due to a medical condition or disability or may need to have a family member with them at all times,
- Vehicular transport of mobility-impaired individuals is allowed via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

Anyone who has a license plate or placard issued by a State Division of Motor Vehicles to a mobility-impaired individual is eligible for the special-use permit; however, the special-use permit is not intended to provide blanket vehicular access to all vehicle-free areas. Because the special-use permit is intended only to allow vehicular transport of mobility-impaired individuals via the shortest, most direct distances from the nearest designated ORV route or Seashore road to a predetermined location in a designated vehicle-free area in front of a village, NPS will issue the special-use permit upon request on a case-by-case basis. The specific terms and conditions of each special-use permit, such as the location to be accessed or the duration of the permit, will be determined based on the individual need. These opportunities are consistent with the applicable requirements and NPS policies.

58. *Comment:* Implementation and enforcement of special-use permits will create an undue workload burden on the Superintendent and NPS personnel.

Response: The operational impacts of ORV management and the associated costs for adequate staffing to implement the ORV management plan and rule, including the special-use permit provision, were carefully considered in the FEIS. The specific circumstances described in paragraph (c)(7) for issuance of a special-use permit to authorize temporary off-road driving in areas not designated as ORV routes are limited in scope, number, and frequency of occurrence. The expected special-use permit workload will not add substantially or uniquely to the general ORV management workload that was considered and addressed in the FEIS.

59. *Comment:* Non-emergency use by nonessential vehicles should be prohibited within a resource closure and special-use permits should state that the holder must adhere to all closures.

Response: NPS concurs with this comment. The wording of paragraph (c)(7) of the rule has been revised to state that the special-use permits are subject to the resource, safety, and other closures implemented under § 7.58(c)(10), and may only be used in a manner consistent with the terms and conditions of the permit.

60. *Comment:* NPS should increase its law enforcement presence and focus on enforcing the existing rules, which are sufficient, rather than establishing additional rules.

Response: Without a rule designating ORV routes, NPS is out of compliance with its own regulations and the E.O.s on ORV use. Therefore, this rule is needed to allow continued ORV use at the Seashore. The operational impacts of ORV management and the associated costs for adequate staffing to enforce regulations related to ORV use were considered and addressed in FEIS.

61. *Comment:* NPS should create a 1,000-meter ORV exclusion zone on beaches adjacent to all NPS campgrounds to improve the experience for people staying in the campgrounds and to reduce visitor conflicts and improvement of amenities.

Response: The beach in front of the Ocracoke campground is designated as vehicle-free during periods of high visitor use (April 1 to October 31). At Cape Point, Oregon Inlet, and Frisco Campgrounds, adjacent areas are open to ORV use year-round to maintain an ORV route, and the Seashore knows of no major issues raised related to safety or conflicts at the campgrounds that would warrant additional restrictions. However, the Superintendent has the authority under paragraph (c)(10) of this rule to temporarily restrict access to ORV routes or areas in accordance with public health and safety criteria.

62. *Comment:* The NPS has mischaracterized beach driving as a ''new'' activity in order to justify new infrastructure.

Response: ORV use at the Seashore is not new. NPS briefly summarized the history of ORV use at the Seashore in the preamble to the proposed rule and more extensively in pp. 17–27 of the FEIS. What is new is that the rulemaking process will result in the formal designation of ORV routes in order to comply with the E.O.s on ORV use and with NPS regulation 36 CFR 4.10(b). As described in the FEIS and ROD, new infrastructure will facilitate public use of designated ORV routes and the vehicle-free areas that are not designated for ORV use.

63. *Comment:* An area that is not endangering the wildlife should be set aside for recreational beach driving. Please act responsibly and build a nearby track for racing around in a dune buggy or off-road vehicle.

Response: The E.O.s require that ORV activities on public lands be limited to designated routes or areas and that these designations be based on the protection of resources, the promotion of visitor safety, and the minimization of user

conflicts. Designating an area for recreational driving or racing would not meet these requirements, as these types of vehicular uses would not promote visitor safety, minimize conflicts, or adequately protect resources.

This rule implements the ROD, which did not provide for such use. Establishing this type of use would have been inconsistent with the purpose of the plan/EIS, which was to ''develop regulations and procedures that carefully manage ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural processes, to provide a variety of visitor use experiences while minimizing conflicts among various users, and to promote the safety of all visitors.''

64. *Comment:* Where ORV use is allowed could be based on seasonal indicators such as the summer tourist season or by seasonal nesting patterns for species at the Seashore.

Response: While preparing the plan/EIS, NPS considered a variety of seasonal factors, including shorebird and turtle nesting seasons, and park visitation and rental unit occupancy trends, before determining the dates used for seasonal restrictions in the Selected Action and ROD. The proposed rule was based on and is consistent with the ROD.

65. *Comment:* Seasonal ORV closures of villages should be based on conditions, not arbitrary dates. Dates should not be permanently established in the proposed rule, but should be determined annually by the Superintendent through consultation with Dare County, Hyde County, and North Carolina Department of Transportation officials.

Response: The seasonal dates when ORV use is allowed in front of villages and Ocracoke Campground are not arbitrary. In the ROD, NPS determined these areas would be open to ORVs from November 1 to March 31, when visitation and rental occupancy is lowest. To provide for increased visitor safety and additional opportunities for a vehicle-free experience, these areas will be closed to ORV use from April 1 to October 31 when visitation and rental occupancy is highest.

66. *Comment:* The language describing user conflicts in the proposed rule is inaccurate. NPS would have everyone believe that the people who use the Seashore are in conflict with each other, which is not true.

Response: The existence of visitor conflicts has been documented in many public comments received on the Interim Strategy and on the DEIS. The Seashore also receives letters from visitors complaining about the adverse effects of ORVs on their experience at the Seashore. Some members of the negotiated rulemaking committee represented members of the public that consider the presence of vehicles driving on the beach as a conflict with their experience of the Seashore.

The Seashore does not compile data on numbers of these complaints or incidents of visitor conflict, nor is a quantitative analysis required to manage or minimize it under the E.O.s. As required, the Seashore is designating routes to ''minimize visitor conflict.''

67. *Comment:* ORVs should be limited as to the amount of noise each vehicle can make.

Response: Vehicles used off-road must be registered, licensed, and insured for highway use and must comply with inspection regulations within the state, country, or province where the vehicle is registered.

Most jurisdictions require that vehicles authorized for highway use have functioning exhaust and muffler systems and prohibit modifications to those systems that could result in excessive noise. In addition, 36 CFR 2.12, Audio Disturbances, prohibits the operation of motorized vehicles within NPS units in excess of 60 dBA at a distance of 50 feet from the source, or if below that noise level, noise which is unreasonable. The rule also establishes reduced speed limits, which will reduce vehicular noise.

NPS believes that this combination of restrictions will adequately protect the soundscape in the Seashore.

68. *Comment:* There should be substantial fines for violation of ORV rules and requirements.

Response: Most of the violations observed at the Seashore are considered petty offenses (Class B Misdemeanors) in the Federal Court System, which carry a maximum fine of $5,000.00 and/or six months in prison. The size of fines is also governed by a collateral forfeiture schedule, as approved by the Chief Judge of the Eastern District of North Carolina. The last update to the collateral forfeiture schedule was approved by the court in 2004. NPS will submit an updated collateral forfeiture schedule in the next year or two and may request higher fines for ORV related offenses. In addition to the possibility of fines for the violator, an ORV permit may be revoked for violation of applicable park regulations or terms and conditions of the permit, which includes violation of resource protection closures.

69. *Comment:* Night driving should be prohibited during sea turtle and bird nesting season.

Response: This rule prohibits night driving from May 1 through September 14, which coincides with sea turtle nesting season. The rule also authorizes the Superintendent to permit night driving from September 15 through November 15, but only in areas where no sea turtle nests remain. Pre-nesting and seasonal resource closures described in the FEIS prohibit any ORV use in these areas during the nesting period for sensitive bird species. NPS believes that these measures provide ample nighttime protection for birds, sea turtles, and their nests.

70. *Comment:* Night driving restrictions are not needed, are not based on science, and should not be included in the rule. There has only been one documented case in the history of the Seashore of a sea turtle being hit by an ORV, and that occurred in an area closed to the public while the consent decree night driving restriction was in effect.

Response: The sea turtle management procedures at the Seashore are based on the latest scientific research and are consistent with the latest U.S. Fish and Wildlife Service Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (2008) and North Carolina Wildlife Resources Commission guidelines, which were both developed by scientific experts in the field of loggerhead sea turtle biology and conservation. For example, the loggerhead sea turtle recovery plan recommends that nighttime driving on beaches during the loggerhead nesting season be prohibited because vehicles on the beach have the greatest potential to come into contact with nesting females and emerging hatchlings at night.

Driving on the beach at night has been shown to impact nesting sea turtles and hatchlings both directly and indirectly. Because visibility is reduced at night, there is also the potential for nesting, live stranded, or hatchling turtles to be hit by ORVs operating at night. In addition, because NPS does not have the resources to monitor the entire beach 24 hours per day, the number of recorded incidents resulting from human activities, especially at night, likely underestimates the actual number of incidents that occur.

Even in areas that people do not normally access due to the distance from beach access points, the Seashore has documented vehicle lights and people with lights and cameras causing false crawls—false crawls that would likely not have occurred if ORVs had not brought people to those locations. Park staff have also documented turtles crawling toward vehicle lights after

nesting, false crawls adjacent to fire pits, hatchlings disoriented by fires, hatchlings caught in tire ruts, and vehicles running over turtle nests before morning turtle patrols—some with recorded damage to eggs.

Though it is the only known recorded incident at the Seashore where an adult nesting turtle was struck and killed by an ORV, the recent death of an adult nesting turtle that likely occurred during the early morning hours of June 24, 2010 indicates that the potential does exist for vehicles driving at night to strike and kill nesting turtles.

71. *Comment:* The regulation should allow portions of designated ORV routes to remain open to night driving rather than closing the entire route containing a turtle nest.

Response: NPS concurs with this comment and has revised the rule language to provide the Superintendent with the authority to open ''portions of'' designated ORV routes in sea turtle nesting habitat to night driving if no turtle nests remain within those portions.

72. *Comment:* NPS should close the Seashore to night driving from 10 p.m.–6 a.m. or from one hour after sunset to one hour before sunrise.

Response: As described in the FEIS, NPS studied several different scenarios for establishing the hours and dates for night driving at the Seashore. Restricting night driving between the hours of 9 p.m. and 7 a.m. provides an easily understood, enforceable restriction that provides a balance between conservation and public access by encompassing the majority of the nesting and hatching periods at night while generally allowing turtle patrol staff time to find and protect nests before ORVs are on the beach each day.

73. *Comment:* The rule should allow vehicle operators to avoid turtles rather than closing routes to night driving.

Response: As noted above, night driving has been shown to impact sea turtles, and turtle management experts who developed the loggerhead sea turtle recovery plan recommend that night driving be prohibited during the turtle nesting season. Allowing vehicles in close proximity to sea turtles, especially at night, greatly increases the potential for direct and indirect disturbance to nesting turtles and hatchlings. Therefore, seasonally closing ORV routes (or portions of ORV routes) to night driving is a reasonable method of protecting sea turtles while continuing to provide ORV users with some level of night driving opportunities outside of seasonal restrictions.

74. *Comment:* NPS should require applicants for night driving permits to complete an educational program.

Response: The education program that must be taken in order to obtain the standard ORV permit will address night driving restrictions and reasons for those restrictions. The rule does not require a separate or special permit for night driving.

75. *Comment:* The night driving restriction will curtail other early evening and nighttime activities at the Seashore, such as night sky viewing and beach fires. Lack of ORV access at night will create safety issues by requiring fisherman to walk in the dark to access prime historic fishing grounds.

Response: Seasonal night driving restrictions may affect the ability of visitors to have beach fires in more remote areas of the Seashore after 9 p.m. However, beach fires will still be permitted throughout the Seashore outside of turtle nesting season and in front of villages and other selected beaches during the nesting season. Night driving restrictions will actually improve the ability of visitors to enjoy night sky viewing by reducing the amount of ambient light on the beaches. Although night driving restrictions will preclude fishermen from driving to or from fishing grounds after 9 p.m., nothing in the rule will prohibit fishermen (or other visitors) from carrying a flashlight along the beach outside of resource closures.

76. *Comment:* Camping in self-contained vehicles, vehicles engaged in fishing, and vehicles remaining stationary should be allowed on the beach at night.

Response: Off-season, self-contained vehicle camping in park campgrounds was analyzed in the FEIS in Alternative E. It was not selected in the ROD or included in the rule due to the staffing and operating costs, and the permitting, law enforcement patrol, and maintenance workloads associated with keeping campgrounds open in the off-season for a limited number of campers.

NPS believes that local commercial campgrounds provide appropriate opportunities for off-season vehicle camping. Allowing overnight parking on the beach when night driving is restricted would create patrol and enforcement problems, and would rely on the unrealistic expectation that visitors parked in such locations would strictly comply with the night driving restrictions. NPS does not have the resources to patrol the entire Seashore at night to enforce compliance, and allowing parked vehicles on the beach at night would potentially result in additional compliance problems that would cause adverse impacts to park resources.

77. *Comment:* The Seashore should be closed to commercial fishing. If not closed to commercial fishing, there should be specific restrictions on commercial fishing activity and permits.

Response: The Seashore's enabling legislation provides that the legal residents of the villages have the right to earn a livelihood by fishing within the boundaries of the Seashore. Therefore, NPS allows commercial fishing. However, the activity is managed and permitted in accordance with the eligibility requirements in 36 CFR 7.58(b). Under the ORV rule, commercial fishermen will not be required to obtain a separate ORV permit, but their use of vehicles on Seashore beaches will be regulated through their commercial fishing permit issued by the Seashore.

78. *Comment:* Commercial fishing should be allowed only where there is neither a resource closure nor a lifeguarded beach.

Response: Commercial fishing vehicles have been prohibited from entering either resource closures or lifeguarded beaches for a number of years under the Superintendent's Compendium, and NPS is continuing this prohibition in this rule. To make it clear that the restriction applies to either situation, NPS has revised the wording in paragraph (c)(8)(i) of the rule.

79. *Comment:* The list of ''open ramps'' in paragraph (c)(9) is misleading because it includes proposed ramps that are not yet funded. Since there are ramps, parking areas, and dune walkovers identified as mitigation that are not funded, they should not be included in the rule and the rule should not be implemented until the ramps are constructed. The funds needed to construct the proposed ramps and other infrastructure need to be identified.

Response: Implementation of the FEIS, ROD and this rule will require funding for construction of supporting infrastructure, such as new access ramps and parking areas. NPS anticipates that funding for this construction will come from appropriated NPS program funds such as ''Line Item Construction'' or ''Repair and Rehabilitation,'' or from the park's recreation fees, or from grants. The only designated year-round ORV route at the Seashore that will not have an established ORV access point until after the new ramps are constructed is the area between ramp 59.5 and ramp 63. Therefore, NPS has amended the language in the rule to allow existing ramp 59 to remain open to ORV use

until ramp 59.5 can be funded and constructed.

80. *Comment:* Some areas that have been historically open to ORVs have been excluded from the designated routes listed in the tables in paragraph (c)(9). If NPS moves forward with its plan to close these areas to ORV use, the rule should be revised to provide for an adaptive management process under which NPS could reopen these closures based on visitor use patterns.

Response: The designated ORV routes in paragraph (c)(9) of the rule are taken from Alternative F in the FEIS, which became the Selected Action in the ROD. An NPS regulation, 36 CFR 4.10, requires NPS to designate routes through the promulgation of this special regulation.

NPS received and considered numerous comments on the proposed ORV routes during the review of the DEIS and addressed these public comments in Appendix C of the FEIS. While the FEIS contains adaptive management provisions for protected species management, the designation of ORV routes in a regulation does not lend itself to the principles of adaptive management, which is designed to make iterative adjustments to management techniques as new scientific information becomes available. If, at some point in the future, NPS needs to revise the designated ORV routes, additional NEPA compliance will be required, followed by a new proposed and final rule.

81. *Comment:* Paragraph (c)(9) of the proposed rule (ORV Routes) should be amended to state explicitly that these routes will be subject to mandatory resource, safety, seasonal, and other closures. These clarifications are necessary to make it clear that even if a route is ''open,'' it is still subject to certain closures. By not putting in these clarifications, NPS would violate E.O. 11644.

Response: The wording of paragraph (c)(9) has been revised in the rule to make it clear that the routes and ramps listed are ''designated'' for ORV use, not necessarily ''open.'' Paragraph (c)(10) indicates that routes or areas designated for off-road use are subject to closure or restriction by the Superintendent for a variety of reasons, including natural and cultural resource protection.

82. *Comment:* Section 7.58(c)(10) should be revised to provide the Superintendent with the discretion to authorize enhanced access when he or she determines that such enhanced access is appropriate based upon consideration of the relevant factors.

Response: Paragraph (c)(10) applies specifically to the Superintendent's authority to establish temporary closures of ORV routes as needed to provide for resource protection, public health and safety, and other conditions described in that paragraph. Examples could include pre-nesting closures, carrying capacity closures, and implementation of resource protection buffers described in the FEIS. The Superintendent does not have the discretion to allow vehicular access to areas that are not authorized or designated as ORV routes in the special regulation, except for the specific situations addressed in paragraph (c)(7), related to temporary special-use permits for off-road driving.

83. *Comment:* There is no basis for the NPS to establish parking requirements and reduced speed limits in the rule.

Response: As described in the FEIS, NPS decided to implement the ''one deep'' beach parking restriction as a safety measure to ensure that two-way traffic will not be impeded during times of high ORV use. Although parking multiple rows deep may seem desirable to some visitors, law enforcement staff have documented that it has resulted in parking and traffic congestion, especially on narrow beaches. This congestion blocks vehicle travel lanes, impedes safe traffic flow, fosters disorderly behavior, and results in a potentially dangerous situation in the event of an emergency. Reduced speed limits were implemented to increase pedestrian safety in areas where pedestrians and ORVs are in close proximity to one another.

84. *Comment:* The use of the term ''may'' in paragraph (c)(10), Superintendent's Closures, renders the section permissive rather than obligatory. As written, the proposed rule seems to allow the Superintendent to choose not to impose any closures at all, even in the presence of protected species nests or chicks that would warrant imposition of buffers under the FEIS and ROD. The wording should be revised to state ''the Superintendent shall limit, restrict, or terminate access to routes or areas designated for off-road use'' based on the considerations listed.

Response: The intent of the special regulation is to implement the Selected Action as described in the FEIS and ROD, which includes implementation of the Species Management Strategies described in Table 10–1 in the FEIS. As also described in response #10, the strategies will be periodically reviewed to evaluate their effectiveness. The wording of paragraph (c)(10) has been revised to state that the Superintendent ''will'' temporarily limit, restrict, or terminate access to routes and areas designated for off-road use in accordance with the criteria listed; and wording has been added that states ''the Superintendent will conduct periodic reviews of the criteria and the results of these closures to assess their effectiveness.''

85. *Comment:* The vehicle carrying capacity is objectionable and not necessary, as the capacity of the area regulates itself. Carrying capacity should be struck from the rule.

Response: NPS disagrees with the assertion that ''the capacity of the area regulates itself.'' Numerous documented law enforcement incidents have occurred over the years at popular locations during peak use periods, such as summer holiday weekends, involving crowded conditions, disorganized parking, and unsafe vehicle operation. The 260 vehicle per linear mile limit, based on a physical space requirement of 20 feet per vehicle, will allow enough space for vehicles to be parked side-by-side with their doors open without touching each other and with room for a person to pass between them safely. This, along with the other measures in the rule, will improve visitor experience and visitor safety during busy weekends.

86. *Comment:* The carrying capacity in the proposed rule should be much lower and allow no more than 130 ORVs per mile of Seashore. Language should be added to the rule to clarify that density limitations apply per mile of the beach, and not to the entire National Seashore.

Response: As described above, NPS developed carrying capacity restrictions to work with other measures in the rule to mitigate public safety and visitor experience impacts during peak ORV use periods at the Seashore. The established capacity limits are intended to apply to beach segments open to ORV use at any particular time and not as a method of establishing the total allowable numbers of vehicles in the entire Seashore at any one time. Paragraph (c)(13) of the rule has been revised to make it clear that the carrying capacity applies to that portion of an ORV route that is open for ORV use.

Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, NPS made the following changes in the final rule:

7.58(c)(1)	Changed definition of *ORV corridor* to: • Describe the physical boundaries of the ORV corridor on the beach; and • Ensure that the definition is consistent with the intent of the language in the FEIS and ROD.
7.58(c)(2)(v)	• Removed the ''in person'' language from the rule to provide the Superintendent with greater flexibility for administering the ORV permit issuance procedures.
7.58(c)(7)(iii)	• Allowed ORVs that transport mobility-impaired individuals to remain on the beach, subject to conditions in the special-use permit issued for the activity. • Clarified that these special-use permits are subject to all resource, safety, seasonal, and other closures implemented under paragraph § 7.58(c)(10) of the rule.
7.58(c)(8)(i) and (ii)	• Clarified exactly where commercial fishing permit holders can operate ORVs when engaged in authorized commercial fishing activities.
7.58(c)(9)	• Clarified that designated ORV routes and ramps are subject to resource, safety, seasonal, and other closures. • Indicated that ramp 59 will be temporarily designated as an ORV ramp until ramp 59.5 is constructed. • Edited designated routes table for Hatteras Island to provide a more accurate description of the current conditions at Hatteras Inlet spit, as a result of physical changes to the island caused by Hurricane Irene in August 2011. • Edited designated routes table for Ocracoke Island to provide that ramp 59 is temporarily designated as an ORV ramp until ramp 59.5 is constructed and operational.
7.58(c)(10)	• Clarified the Superintendent's authority to implement and remove closures. • Clarified the criteria for establishing closures. • Added language regarding the periodic review process.
7.58(c)(12)(i)	• Clarified that the Superintendent may open portions of designated ORV routes in sea turtle nesting habitat to night driving from September 15 through November 15, if no turtle nests remain within these portions of ORV routes. The proposed rule stated that only entire routes with no turtle nests remaining could be opened to night driving.
7.58(c)(13)	• Clarified that carrying capacity refers to the maximum number of vehicles allowed on any open ORV route, at one time, and is the length of the route (or, if part of the route is closed, the length of the portion of the route that is open) divided by 6 meters (20 feet).

The Final Rule

This final rule establishes a special regulation as provided in 36 CFR 4.10(b) to manage ORV use at the Seashore. The regulation implements portions of the Selected Action, as described in the ROD, by designating ORV routes at the Seashore, establishing requirements to obtain a permit, and imposing date and time and other restrictions related to operation of ORVs, including vehicle and equipment standards. In addition, the final rule corrects a drafting error at § 7.58(b)(1) to clarify that the definitions found there only apply to § 7.58 and not to the entirety of 36 CFR part 7.

The rule will also delete the definition of permittee at § 7.58(b)(1)(ii) as it is unnecessary and potentially confusing to the public, as the term could be applied to individuals holding different types of permits for different activities. This deletion consequently requires redesignation of the remaining provisions in paragraph (b).

The following explains some of the principal elements of the final rule in a question and answer format:

What is an Off-Road Vehicle (ORV)?

For the purposes of this rule, an off-road vehicle or ORV means a motor vehicle used off of park roads (off-road). Vehicles will need to comply with vehicle and equipment requirements in this rule; vehicles that do not comply are not authorized for ORV use at the Seashore.

Do I need a permit to operate a vehicle off road?

Yes. To obtain an ORV permit, you must complete a short education program, acknowledge in writing that you understand and agree to abide by the rules governing ORV use at the Seashore, and pay the applicable permit fee. Both weekly (7-day, valid from the date of issuance) and annual (calendar year) ORV permits will be available.

Is there a limit to the number of ORV permits available?

No. There will be no limit to the number of permits that the Superintendent could issue. However, use restrictions may limit the number of vehicles on a particular route at one time.

Several of my family members have ORVs that we would like to use on Seashore beaches. Do we need to get a permit for each vehicle?

Yes. You will need to get a permit for each vehicle that you want to use for driving on designated ORV routes. You must display the proof of permit, in a manner and location specified by the Superintendent, on each vehicle that you operate on designated ORV routes within the Seashore. (The proof of permit may be a color coded windshield sticker, hang tag for the rear-view mirror, or some other indicator provided by NPS.)

Where can I operate my vehicle off road?

Once you obtain an ORV permit, you may operate a vehicle off road only on designated routes described in the tables located in § 7.58(c)(9). The tables also provide dates for seasonal restrictions on driving these designated routes. Maps of designated ORV routes will be available in the Office of the Superintendent and on the Seashore Web site.

Does the ORV permit guarantee that all designated ORV routes will be open for me to use?

No. In addition to the referenced seasonal restrictions, ORV routes are subject to temporary resource and safety closures. However, past experience indicates that substantial portions of the beach designated as ORV routes will remain open for ORV use even when other sections are temporarily closed.

Are there any requirements for my vehicle?

Yes. To receive a permit to operate a vehicle on designated ORV routes, your vehicle must:

• Be registered, licensed, and insured for highway use and comply with inspection requirements for the state, country, or province where the vehicle is registered;

• Have no more than two axles and be equipped with tires that are listed or approved by the U.S. Department of Transportation as described at: *http://www.safercar.gov/Vehicle+Shoppers/Tires/Tires+Rating/Passenger+Vehicles*.

• Be equipped with a low-pressure tire gauge, shovel, jack, and jack support board.

Can I drive my two-wheel-drive vehicle on designated ORV routes?

Yes. Four-wheel-drive vehicles are recommended, but two-wheel-drive vehicles will be allowed if, in the judgment of the vehicle operator, the vehicle is capable of over-sand travel.

Can I tow a boat or utility trailer with my vehicle on designated ORV routes?

Yes. Towed boat and utility trailers with one or two axles will be allowed. Boat and utility trailers with more than two axles will be prohibited.

Can I tow a travel trailer (i.e., a trailer with sleeping and/or restroom facilities) on designated ORV routes?

No. Travel trailers will be prohibited on designated ORV routes, as camping at the Seashore is prohibited except in designated campgrounds.

Can I ride my motorcycle off of seashore roads?

No. The operation of motorcycles will be prohibited on designated ORV routes. Motorcycles are generally not capable of travelling through the deep, soft sand or carrying the requisite equipment for self-extraction should they become stuck.

Can I ride my all-terrain vehicle (ATV), or utility vehicle (UTV) off of seashore roads?

No. ATVs and UTVs may not be operated on park roads or designated off-road routes. These vehicles have historically not been allowed to operate within the Seashore. Authorizing their use would interfere with the more significant and traditional use of four-wheel drive pick-up trucks, sport utility vehicles, and other passenger vehicles for off-road access associated with fishing, picnicking, sun bathing, surfing, wading, and swimming.

What is the speed limit on designated ORV routes?

The speed limit will be 15 miles per hour (unless otherwise posted), except for emergency vehicles responding to a call.

Are there right-of-way rules for ORV drivers in addition to those already in effect at the Seashore?

Yes. Vehicles must yield to pedestrians and move to the landward side of the ORV corridor when approaching or passing a pedestrian on the beach. When traveling within 100 feet of pedestrians, ORVs must slow to 5 mph.

Can I drive on designated ORV routes at night?

Yes, but not at all times on all routes. ORVs will be allowed on designated ORV routes 24 hours a day from November 16 through April 30, subject to the terms and conditions established under an ORV permit. From May 1 through September 14, designated ORV routes in potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) will be closed to ORVs from 9 p.m. until 7 a.m. From September 15 through November 15, designated ORV routes in potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) will remain closed to ORVs from 9 p.m. until 7 a.m., however, the Superintendent may reopen portions of designated ORV routes at night if there are no turtle nests remaining. This is a minor change to the dates in the ROD. NPS has decided it will be easier for the public to understand and more convenient to administer if the night-driving dates coincided with some of the seasonal ORV route dates. Therefore, night driving may be allowed beginning on September 15 instead of September 16. Routes that are subject to these night-driving restrictions, as well as routes or portions of routes identified as having no turtle nests remaining, will be shown on maps available in the Office of the Superintendent and on the Seashore Web site.

Can I leave my ORV parked on the beach if I don't drive it between 9 p.m. and 7 a.m. during the dates night-driving restrictions are in effect?

No. During the restricted hours, all vehicles will be prohibited on designated ORV routes, including the beach.

Is a separate permit required for night driving?

No. It will be covered by the ORV permit required to drive on the designated ORV routes in the Seashore.

I have a family member who is disabled or mobility-impaired. Can I use my ORV to drive that family member to the beach where we are gathering, even if it is not designated as an ORV route?

Yes, if you obtain a special-use permit for that purpose. The special-use permit will allow you to transport mobility-impaired individuals to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use. You will be subject to the terms and conditions set forth in the permit. Additionally, you should keep in mind that with a standard ORV permit you will have access to many miles of beach open to ORVs year-round or seasonally. In those areas, vehicles may simply be parked in the ORV corridor.

Are there other types of permits that allow ORV use at the seashore?

Yes. Commercial use authorizations would, as appropriate, also authorize ORV use by commercial use authorization holders, but not their clients. ORV use by commercial fishermen who are actively engaged in a commercial fishing activity would be authorized under the terms of their commercial fishing special-use permit.

In addition, the Superintendent may issue a special-use permit for temporary ORV use to:

• Allow the North Carolina Department of Transportation to use Seashore beaches as a public way, when necessary, to bypass sections of NC Highway 12 that are impassable or closed for repairs;

• Allow participants in regularly scheduled fishing tournaments to drive in an area if such tournament use was allowed in that area for that tournament before January 1, 2009; or

• Allow vehicular transport of mobility impaired individuals via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

Can commercial fishermen drive in vehicle-free areas?

Yes. In keeping with the current practice, commercial fishermen when actively engaged in their authorized commercial fishing activity may be allowed to operate an ORV in a vehicle-free area if the beach is neither subject to a resource closure nor a lifeguarded beach. Lifeguarded beaches will be seasonally closed to ORVs by the Superintendent. Commercial fishing activities and use of associated fishing

gear conflict with the significant concentrated beach use and associated swimming in these areas.

Commercial fishermen who are actively engaged in authorized commercial fishing activity and are carrying and able to present a fish-house receipt from the previous 30 days will be allowed to enter the beach at 5 a.m. on days when night driving restrictions are in effect for the general public.

Compliance With Other Laws and Executive Orders

Use of Off-Road Vehicles on the Public Lands (E.O. 11644 and 11989)

Section 3(4) of E.O. 11644 provides that ORV ''[a]reas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.'' Since the E.O. clearly was not intended to prohibit all ORV use everywhere in these units, the term ''adversely affect'' does not have the same meaning as the somewhat similar terms ''adverse impact'' or ''adverse effect'' used in the National Environmental Policy Act of 1969 (NEPA). In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term ''adverse effect'' includes minor or negligible effects. Section 3(4) of the E.O., by contrast, concerns substantive management decisions and must be read in the context of the authorities applicable to such decisions. The Seashore is an area of the National Park System. Therefore, NPS interprets the E.O. term ''adversely affect'' consistent with its NPS Management Policies 2006. Those policies require that the NPS only allow ''appropriate use'' of parks and avoid ''unacceptable impacts.''

This rule is consistent with those requirements. It will not impede the attainment of the Seashore's desired future conditions for natural and cultural resources as identified in the FEIS. NPS has determined that this rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural locations within the Seashore. Therefore, within the context of the resources and values of the Seashore, ORV use on the ORV routes designated by this rule (which are also subject to resource closures and other species management measures that will be implemented under the Selected Action in the ROD) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of the Seashore.

Section 8(a) of the E.O. requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of the information gathered, agency heads shall from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the E.O. The Selected Action for the FEIS, as described in the ROD, identifies monitoring and resource protection procedures, periodic review, and desired future conditions to provide for the ongoing and future evaluation of impacts of ORV use on protected resources. The park Superintendent has the existing authority under both this final rule and 36 CFR 1.5 to close portions of the Seashore as needed to protect park resources.

Regulatory Planning and Review (Executive Order 12866 and 13563)

This document is a significant rule, and the Office of Management and Budget (OMB) has reviewed the rule in accordance with E.O. 12866 and 13563. The assessments required by E.O. 12866 and the details of potential beneficial and adverse economic effects of the final rule can be found in the report entitled ''Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore,'' which is available online at *http://www.parkplanning.nps.gov/caha*.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) The rule does raise novel legal or policy issues since ORV use at the Seashore has been the subject of litigation in the past; a settlement agreement between the parties was reached in May 2008 and ORV use at the Seashore is currently managed under a court order/consent decree until the final rule is promulgated.

Regulatory Flexibility Act (RFA)

According to the RFA and subsequent court decisions, NPS must assess the impacts on directly regulated entities, but is not required to analyze in a regulatory flexibility analysis the indirect effects on small entities resulting from rules (see Small Business Administration [2003] for a discussion of indirect versus direct impacts). No entities, small or large, are directly regulated by the final rule. Accordingly, NPS certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined by the RFA and interpreted by the courts. This certification is based on information contained in the report entitled ''Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore,'' available for review online at *http://www.parkplanning.nps.gov/caha*. As stated in that report, no entities, small or large, are directly regulated by the final rule, which only regulates visitors' use of ORVs.

As part of the socio-economic impact analysis for the plan/EIS, and based on suggestions from negotiated rulemaking advisory committee members, NPS conducted a small business survey, a visitor intercept survey, and a vehicle count study to supplement the existing sources of socio-economic data that were available in the public domain. We carefully considered this information in analyzing the rule's costs, benefits, and impact.

While close to 100 percent of the rule's economic impacts will fall on small businesses, some popular areas, such as Cape Point, South Point, and Bodie Island spit, would have designated year-round or seasonal ORV routes. The presence of more vehicle-free areas for pedestrians, combined with increased parking for pedestrian access, could increase overall visitation and thereby help businesses to recoup some of the revenues lost as a result of ORV restrictions.

The Selected Action described in the ROD, which is the basis for the final rule, includes a number of measures designed to mitigate the effect on the number of visitors, as well as the potential for indirect economic effects on village businesses that profit from patronage by Seashore visitors who use ORVs. These include: new pedestrian and ORV beach access points, parking areas, pedestrian trails, routes between dunes, and ORV ramps to enhance ORV and pedestrian access; a designated year-round ORV route at Cape Point and South Point, subject to resource closures when breeding activity occurs; and pedestrian shoreline access along ocean and inlet shorelines adjacent to shorebird pre-nesting areas until breeding activity is observed. In addition, NPS will seek funding for an alternative transportation study and consider applications for businesses to offer beach and water shuttle services.

These extra efforts to increase overall access and visitor use under the Selected Action, which were developed with extensive public involvement, should increase the probability that the economic impacts are on the low rather than high end of the range.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA, 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does 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.

This determination is based on information contained in the report titled ''Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore,'' available online at *http://www.parkplanning.nps.gov/caha*. This action will result in increased costs for those visitors desiring to operate ORVs on the beach, due to the requirement for an ORV permit. However, the price of the permit will be based on a cost recovery system and will not result in a major increase in costs to visitors. Businesses operating in the Seashore under a commercial use authorization and commercial fishermen operating under a commercial fishing special-use permit will not need an ORV permit.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The designated ORV routes are located entirely within the Seashore, and will not result in direct expenditures by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. No taking of real or personal property will occur as a result of this rule. Access to private property located within or adjacent to the Seashore will not be affected by this rule. This rule does not regulate uses of private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A Federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it will have no potential effect on federally recognized Indian tribes.

On August 27, 2010, the NPS sent a letter to the Tuscarora Nation requesting information on any historic properties of religious or cultural significance to the tribe that would be affected by the FEIS. The Tuscarora Nation has not informed the Seashore of any such properties.

Paperwork Reduction Act (PRA)

This rule does not contain any new collection of information that requires approval by OMB under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with NPS special-use permits and has assigned OMB control number 1024–0026 (expires 06/30/2013). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule implements portions of the FEIS and ROD, and is a major Federal action significantly affecting the quality of the human environment. In accordance with NEPA, NPS prepared the DEIS and the FEIS. The DEIS was released to the public on March 5, 2010, and a 60-day public comment period followed beginning on March 12, 2010. The FEIS was released on November 15, 2010. The NPS Notice of Availability and the EPA Notice of Availability for the FEIS were published in the **Federal Register** on November 15 and November 19, 2010, respectively. The FEIS evaluated six alternatives for managing off-road motorized vehicle access and use at the Seashore, including two no-action alternatives. The ROD, which selected Alternative F, was signed on December 20, 2010, and a notice of the decision was published in the **Federal Register** on December 28, 2010. The purpose of this rule is to implement the Selected Action as described in the ROD. A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement is contained in the FEIS available online at: *http://www.parkplanning.nps.gov/caha.*

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Administrative Procedure Act

This rule is effective on February 15, 2012. Under 5 U.S.C. 553(d), new rules ordinarily go into effect no less than thirty days after publication in the **Federal Register**, except under specified circumstances, including a finding by the agency that there is good cause for making the rule effective earlier. For this regulation, the NPS has determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective no later than February 15, 2012. The NPS has found that good cause exists for this effective date, for the following reasons:

(1) The ROD for the FEIS, which this rule implements, was signed on December 20, 2010, and the public was informed of the availability of the FEIS and ROD through notice in the **Federal Register** on December 28, 2010. Therefore, by February 15, 2012, the public will have had 415 days notice of the NPS decision that forms the basis of this rule.

(2) An integral part of the FEIS and rule is the species management strategies described in the FEIS, which were developed to manage ORV use in a manner conducive to the protection of the migratory birds and sea turtle species that rely on the Seashore's beach habitat for nesting. The shorebird breeding season at the Seashore begins

in early March. Implementation of the rule and the associated species management strategies would be most effective if the designated ORV routes and ORV permit and education requirements were implemented, and signs reflecting the new requirements were installed, prior to the start of the breeding season. A significant change in management procedures and information regarding ORV requirements implemented after the breeding season begins would compromise the efficiency and effectiveness of ORV management and species protection at the Seashore and be confusing to Seashore visitors.

(3) There is a court-approved deadline of February 15, 2012, for the rule to take effect, which would not be met if this rule were further delayed.

There is no benefit in delaying the effective date of this rule, and the above-described harms to the public resulting from a procedural delay of this rule should be avoided. An effective date of February 15, 2012, is therefore warranted.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. In § 7.58:
■ A. Revise the introductory text in paragraph (b)(1).
■ B. Remove paragraph (b)(1)(ii).
■ C. Redesignate paragraphs (b)(1)(iii) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(iv).
■ D. Add paragraph (c).

The revisions and addition read as follows:

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(b) * * *

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

* * * * *

(c) *Off-road motor vehicle use.*

(1) *Definitions.* In addition to the definitions found in § 1.4 of this chapter, the following terms apply in this paragraph (c):

ORV means a motor vehicle used off of park roads (off-road), subject to the vehicle requirements, prohibitions, and permitting requirements described in this paragraph (c).

ORV corridor means the actual physical limits of the designated ORV route in the Seashore. On the landward side, the ORV corridor on Seashore beaches will be marked when possible by posts that are located seaward of the toe of the dune or the vegetation line. On the seaward side, the corridor runs to the water line, which will not be marked by posts unless necessary. Where the ocean beach is at least 30 meters wide above the high tide line, the landward side of the corridor will be posted at least 10 meters seaward of the toe of the dune.

(2) *ORV permits.* ORV permits are a form of NPS special park use permits, which are issued and administered by the Superintendent and for which the NPS charges a fee to recover its administrative costs.

(i) A permit issued by the Superintendent is required to operate a vehicle on designated ORV routes at the Seashore.

(ii) Operation of a motor vehicle authorized under an ORV permit is limited to those routes designated in this paragraph (c).

(iii) There is no limit to the number of ORV permits that the Superintendent may issue.

(iv) Annual ORV permits are valid for the calendar year for which they are issued. Seven-day ORV permits are valid from the date of issue.

(v) In order to obtain a permit, an applicant must comply with vehicle and equipment requirements, complete a short education program in a manner and location specified by the Superintendent, acknowledge in writing an understanding of the rules governing ORV use at the Seashore, and pay the permit fee.

(vi) Each permit holder must affix the proof of permit, in a manner and location specified by the Superintendent, to the vehicle covered by the permit for use off-road.

(3) *Vehicle and equipment requirements.* The following requirements apply for driving off-road:

(i) The vehicle must be registered, licensed, and insured for highway use and must comply with inspection requirements for the state, country, or province where the vehicle is registered.

(ii) The vehicle may have no more than two axles.

(iii) A towed boat or utility trailer may have no more than two axles.

(iv) Vehicle tires must be listed or approved by the U.S. Department of Transportation.

(v) The vehicle must carry a low-pressure tire gauge, shovel, jack, and jack support board.

(4) *Vehicle inspection.* Authorized persons may inspect the vehicle to determine compliance with the requirements of this paragraph (c).

(5) *Certain vehicles prohibited.* The off-road operation of a motorcycle, all-terrain vehicle (ATV), or utility vehicle (UTV) is prohibited.

(6) *Travel trailers prohibited.* The towing of a travel trailer (*i.e.,* a trailer with sleeping or bathroom facilities) off-road is prohibited.

(7) *Special-use permits for off-road driving, temporary use.* Special-use permits issued under this paragraph are subject to resource, safety, and other closures implemented under § 7.58(c)(10), and may only be used in a manner consistent with the terms and conditions of the permit. The Superintendent may issue a special-use permit for temporary off-road vehicle use to:

(i) Authorize the North Carolina Department of Transportation to use Seashore beaches as a public way, when necessary, to bypass sections of NC Highway 12 that are impassable or closed for repairs;

(ii) Allow participants in regularly scheduled fishing tournaments to drive in an area if driving was allowed in that area for that tournament before January 1, 2009; or

(iii) Allow vehicular transport of mobility impaired individuals via the shortest, most direct distance from the nearest designated ORV route or Seashore road to a predetermined location in a beach area in front of a village that is not otherwise open to ORV use.

(8) *Commercial fishing vehicles.* The Superintendent, when issuing a commercial fishing permit, may authorize the holder, when actively engaged in authorized commercial fishing, to operate a vehicle off-road.

(i) An authorization under this paragraph may allow off-road driving on a beach not otherwise designated for ORV use, only if the beach is not subject to a resource closure or is not a lifeguarded beach.

(ii) An authorization under this paragraph may allow off-road driving beginning at 5 a.m. on days when night-driving restrictions are in effect, to set or tend haul seine or gill nets, only if the permit holder is carrying and able to present a fish-house receipt from the previous 30 days.

(9) *ORV routes.* The following tables indicate designated ORV routes. The following ramps are designated for off-road use to provide access to ocean beaches: 2.5, 4, 23, 25.5, 27, 30, 32.5, 34, 38, 43, 44, 47.5, 49, 55, 59, 59.5, 63, 67, 68, 70, and 72. Designated ORV routes and ramps are subject to resource, safety, seasonal, and other closures implemented under § 7.58(c)(10). Soundside ORV access ramps are described in the table below. For a village beach to be open to ORV use during the winter season, it must be at least 20 meters (66 feet) wide from the toe of the dune seaward to mean high tide line. Maps showing designated routes and ramps are available in the Office of the Superintendent and on the Seashore Web site.

BODIE ISLAND—DESIGNATED ROUTES	
YEAR ROUND	Ramp 2.5 (0.5 miles south of the southern boundary of Coquina Beach) to 0.2 miles south of ramp 4.
SEASONAL:	
September 15 to March 14	0.2 miles south of ramp 4 to the eastern confluence of the Atlantic Ocean and Oregon Inlet.

HATTERAS ISLAND—DESIGNATED ROUTES	
YEAR ROUND	1.5 miles south of ramp 23 to ramp 27. Ramp 30 to ramp 32.5. The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon: soundside ramps 46, 48, 52, 53, 54 and the soundside ORV access at Little Kinnakeet. Ramp 38 to 1.5 miles south of ramp 38. The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Avon and Buxton: soundside ramps 57, 58, 59, and 60. 0.4 miles north of ramp 43 to Cape Point to 0.3 miles west of ''the hook.'' Interdunal route from intersection with Lighthouse Road (*i.e.,* ramp 44) to ramp 49, with one spur route from the interdunal route to the ORV route below. Ramp 47.5 to east Frisco boundary. A soundside ORV access route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet. Pole Road from Museum Drive to Spur Road to Pamlico Sound, with one spur route, commonly known as Cable Crossing, to Pamlico Sound and four spur routes to the ORV route below. Ramp 55 southwest along the ocean beach for 1.6 miles, ending at the intersection with the route commonly known as Bone Road.
SEASONAL:	
November 1 to March 31	0.1 mile south of Rodanthe Pier to ramp 23. Ramp 34 to ramp 38 (Avon). East Frisco boundary to west Frisco boundary (Frisco village beach). East Hatteras boundary to ramp 55 (Hatteras village beach).

OCRACOKE ISLAND—DESIGNATED ROUTES	
YEAR ROUND	Ramp 59 to ramp 63. After ramp 59.5 is constructed, it will replace ramp 59 for ORV access and the route will be from ramp 59.5 to ramp 63. Three routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens, commonly known as Prong Road, Barrow Pit Road, and Scrag Cedar Road. 1.0 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68. A route from NC Highway 12 to Pamlico Sound located near Ocracoke Campground, commonly known as Dump Station Road. 0.4 miles northeast of ramp 70 to Ocracoke inlet. A route from ramp 72 to a pedestrian trail to Pamlico Sound, commonly known as Shirley's Lane.
SEASONAL:	
September 15 to March 14	A seasonal route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound. A seasonal route at the north end of South Point spit from the beach route to Pamlico Sound.
November 1 to March 31	0.5 mile northeast of ramp 68 to ramp 68 (Ocracoke Campground area).

(10) *Superintendent's closures.* (i) The Superintendent will temporarily limit, restrict, or terminate access to routes or areas designated for off-road use based on one or more of the following criteria:

(A) Public health and safety;

(B) Vehicle carrying capacity and other ORV management considerations;

(C) Natural and cultural resource protection;

(D) Applicable species management strategies including buffer distances; or

(E) Desired future conditions for threatened, endangered, state-listed, and special status species.

(ii) The Superintendent will conduct periodic reviews of the criteria for and results of these closures to assess their effectiveness. The public will be notified of such closures through one or more of the methods listed in § 1.7(a) of this chapter. Violation of any closure is prohibited.

(iii) The Superintendent will remove or relax closures based on the same criteria used for closure.

(11) *Rules for Vehicle Operation.* (i) Notwithstanding the definition of ''Public Vehicular Area'' (PVA) in North Carolina law, the operator of any motor vehicle anywhere in the Seashore, whether in motion or parked, must at all times comply with all North Carolina traffic laws that would apply if the operator were operating the vehicle on a North Carolina highway.

(ii) In addition to the requirements of Part 4 of this chapter, the following restrictions apply:

(A) A vehicle operator must yield to pedestrians on all designated ORV routes.

(B) When approaching or passing a pedestrian on the beach, a vehicle operator must move to the landward side to yield the wider portion of the ORV corridor to the pedestrian.

(C) A vehicle operator must slow to 5 mph when traveling within 30.5 meters (100 feet) or less of pedestrians at any location on the beach at any time of year.

(D) An operator may park on a designated ORV route, but no more than one vehicle deep, and only as long as the parked vehicle does not obstruct two-way traffic.

(E) When driving on a designated route, an operator must lower the vehicle's tire pressure sufficiently to maintain adequate traction within the posted speed limit.

(F) The speed limit for off-road driving is 15 mph, unless otherwise posted.

(12) *Night-Driving Restrictions.*

(i) Hours of operation and night-driving restrictions are listed in the following table:

HOURS OF OPERATION/NIGHT DRIVING RESTRICTIONS

November 16–April 30	All designated ORV routes are open 24 hours a day.
May 1–September 14	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed from 9 p.m. to 7 a.m.
September 15–November 15	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed from 9 p.m. to 7 a.m., but the Superintendent may open designated ORV routes, or portions of the routes, in sea turtle nesting habitat (if no turtle nests remain), 24 hours a day.

(ii) Maps available in the office of the Superintendent and on the Seashore's Web site will show routes closed due to night-driving restrictions, and routes or portions of the routes the Superintendent opens because there are no turtle nests remaining.

(13) *Vehicle carrying capacity.* The maximum number of vehicles allowed on any ORV route, at one time, is the length of the route (or, if part of the route is closed, the length of the portion of the route that is open) divided by 6 meters (20 feet).

(14) Violating any of the provisions of this paragraph, or the terms, conditions, or requirements of an ORV or other permit authorizing ORV use is prohibited. A violation may also result in the suspension or revocation of the applicable permit by the Superintendent.

(15) *Information Collection.* As required by 44 U.S.C. 3501 *et seq.,* OMB has approved the information collection requirements contained in this paragraph. The OMB approval number is 1024–0026. NPS is collecting this information to provide the Superintendent data necessary to issue ORV special-use permits. The information will be used to grant a benefit. The obligation to respond is required in order to obtain the benefit in the form of the ORV permit.

Dated: January 18, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–1250 Filed 1–20–12; 8:45 am]

BILLING CODE 4310–X6–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0859; FRL–9621–1]

Approval and Promulgation of Air Quality Implementation Plans; Missouri; Reasonably Available Control Technology (RACT) for the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Missouri to EPA on January 17, 2007, with a supplemental revision submitted to EPA on June 1, 2011. The purpose of these SIP revisions is to satisfy the RACT requirements for volatile organic compounds (VOCs) set forth in the Clean Air Act (CAA or Act) with respect to the 8-hour ozone NAAQS. In addition to taking final action on the 2007 submission, EPA is also taking final action to approve several VOC rules adopted by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. We are taking final action to approve these revisions because they enhance the Missouri SIP by improving VOC emission controls in Missouri. EPA's final action to conditionally approve the SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, Missouri will be required to revise its rules to address one additional source category, no later than December 31, 2012.

DATES: *Effective Date:* This final rule will be effective February 22, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2011–0859. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; telephone number (913) 551–7214; email address: *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following questions:

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I. What final action is EPA taking in this final rule?

EPA is taking final action to conditionally approve a SIP revision submitted by the State of Missouri to EPA on January 17, 2007, and June 1, 2011. The purpose of these revisions is to ensure that certain sources of VOC emissions are controlled to a level which represents Reasonably Available Control Technology (RACT), and that certain source categories meet RACT levels consistent with Control Techniques Guidelines (CTGs) issued by EPA prior to 2006. EPA is also taking final action to approve several VOC rules adopted by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. This latter submittal addresses VOC RACT requirements for sources in categories for which EPA issued CTGs during 2006–2008. The purpose of today's action is to conditionally approve the referenced SIP submissions as meeting the VOC RACT requirements of CAA section 182(b)(2) for the Missouri portion of the St. Louis metropolitan 8-hour ozone nonattainment area.

On October 25, 2011, EPA published in the **Federal Register** a proposed rulemaking to conditionally approve this SIP revision and to approve these VOC rules (76 FR 66013). EPA did not receive any public comments on this proposal.

II. What is the background for the approvals by EPA in this final rule?

This section briefly summarizes the background for today's final action. More detailed discussion of the statutory and regulatory background can be found in the preamble to the proposal for this rulemaking (see 76 FR at 66014–17).

The St. Louis metropolitan area, which includes the counties of Franklin, Jefferson, St. Charles and St. Louis, and the City of St. Louis in Missouri (as well as four counties in Illinois), is currently designated as a moderate nonattainment area under the 8-hour ozone standard. For areas in moderate nonattainment with the ozone NAAQS, CAA section 182(b)(2) requires states to submit SIP revisions to EPA that require sources of VOCs that are subject to a CTG issued by EPA, and all other major stationary sources, in the nonattainment area to implement RACT.[1]

On January 17, 2007, the Missouri Department of Natural Resources (MDNR) submitted to EPA proposed SIP revisions demonstrating compliance with the RACT requirements set forth by the CAA under the 8-hour ozone NAAQS. This submittal addressed all source categories for which a CTG had been issued by EPA prior to 2006, and addressed the controls in place for all other major stationary sources in the nonattainment area. Since the development of the initial submittal by MDNR, EPA issued a number of new CTGs, in 2006, 2007, and 2008. States were then required to address RACT requirements for sources in the source categories covered by these CTGs. As a result, on June 1, 2011, MDNR submitted an amendment to its prior RACT demonstration.

With respect to the source categories for which a CTG had been issued by EPA prior to 2006, MDNR certified that all of the existing St. Louis area VOC rules satisfy RACT requirements for the 8-hour ozone standard. EPA proposed to approve this certification (see 76 FR at 66016) and did not receive any public comments on this proposal. Therefore, based on the rational stated in the proposal, EPA is approving this certification in today's action.

With respect to the source categories for which a CTG was issued by EPA beginning in 2006, MDNR submitted three revised rules to EPA for approval. EPA proposed to approve these rules in the proposed rulemaking (see 76 FR at 66016) and did not receive any public comments on this proposal. Therefore, in today's action, EPA finds that these revised rules address the RACT requirements and is approving these rules into the Missouri SIP. These rules cover the following source categories: 1) Industrial Surface Coating Operations (10 CSR 10–5.330), 2) Rotogravure and Flexographic Printing (10 CSR 10–5.340), and 3) Lithographic Printing Operations (10 CSR 10–5.442). For a more detailed description of the CTGs issued by EPA and the corresponding Missouri VOC rules which address these CTGs, see 76 FR at 66015–17.

[1] Section 182(f) of the CAA requires that all SIP provisions required for major stationary sources of VOCs shall also apply to major stationary sources of Nitrogen Oxides (NO_X), unless EPA exempts a specific nonattainment area from this requirement based on criteria set forth in section 182(f). With respect to NO_X, EPA approved Missouri's request for a ''NO_X waiver,'' effective September 19, 2011. Based on this rule, Missouri withdrew the portion of its 2007 submission relating to NO_X RACT. Therefore, today's action only addresses Missouri's obligations for VOCs. See 76 FR at 66014–15.

Finally, in today's final action, EPA is conditionally approving the Missouri SIP revisions that address the requirements of RACT under the 8-hour ozone NAAQS. As discussed in the proposed rulemaking, at this time, EPA is unable to fully approve the state's RACT SIP revision because the current submittal does not yet meet all RACT requirements. Specifically, Missouri has not submitted RACT rules for inclusion into the Missouri SIP to address one CTG: Solvent Cleanup Operations. However, MDNR submitted a letter dated September 30, 2011, committing to submit a SIP to address the solvent cleaning CTG no later than December 31, 2012. Based on this commitment, pursuant to section 110(k)(4) of the CAA, EPA is conditionally approving Missouri's proposed SIP revision in today's action. Under that section, EPA may approve a SIP revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the SIP. Missouri must revise its rules to be consistent with the CAA (*i.e.,* it must adopt a specific enforceable measure to address RACT for solvent metal cleaning operations) no later than December 31, 2012. This conditional approval shall be treated as a disapproval if Missouri fails to comply with this commitment.

III. EPA's Final Action

In today's rulemaking, EPA is taking the following final actions. First, with respect to Missouri's VOC RACT rules that EPA previously approved into Missouri's SIP under the 1-hour ozone standard, EPA is taking final action to approve Missouri's certification that these RACT controls continue to represent RACT under the 8-hour ozone standard. Second, EPA is taking final action to approve revisions to three of Missouri's VOC rules (10 CSR 10–5.330; 10 CSR 10–5.340; 10 CSR 10–5.442) into Missouri's SIP, as these rules satisfy RACT for the Missouri portion of the St. Louis nonattainment area. Third, pursuant to CAA section 110(k)(4), EPA is taking final action to conditionally approve the Missouri SIP revisions that address the requirements of RACT under the 8-hour ozone NAAQS. Missouri must submit a SIP revision addressing the solvent cleaning CTG discussed above, no later than December 31, 2012. This conditional approval shall be treated as a disapproval if Missouri fails to comply with this commitment.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 10, 2012.

Karl Brooks,

Regional Administrator, Region 7.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. Section 52.1320(c) is amended by revising the following entries under ''Chapter 5—Air Quality Standards and Air Pollution Control Requirements for the St. Louis Metropolitan Area'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c)* * *

TABLE 1—EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
10–5.330	Control of Emissions from Industrial Surface Coating Operations.	08/30/2011	01/23/2012 [Insert citation of publication].	
10–5.340	Control of Emissions from Rotogravure and Flexographic Printing Facilities.	08/30/2011	01/23/2012 [Insert citation of publication].	
* *	*	*	* *	*
10–5.442	Control of Emissions from Offset Lithographic Printing Operations.	08/30/2011	01/23/2012 [Insert citation of publication].	
* *	*	*	* *	*

■ 3. In § 52.1320, the table in paragraph (e) is amended by adding the following entry to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(55) VOC RACT Requirements for the 8-hour ozone NAAQS.	St. Louis	01/17/2007, 06/01/2011	01/23/2012 [Insert citation of publication].	We are conditionally approving this SIP revision based on Missouri's commitment to submit a SIP to address the solvent cleaning CTG no later than December 31, 2012.

■ 4. Section 52.1323 is amended by adding paragraph (o) to read as follows:

§ 52.1323 Approval status.

* * * * *

(o) The Administrator conditionally approves the Missouri SIP revisions that address the requirements of RACT under the 8-hour ozone NAAQS under § 52.1320(c). Full approval is contingent on Missouri submitting RACT rules for inclusion into the Missouri SIP to address the Solvent Cleanup Operations CTG, to the EPA, no later than December 31, 2012.

[FR Doc. 2012–1086 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0714; FRL–9620–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 Annual Fine Particulate Standard for the Philadelphia-Wilmington Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to make two determinations regarding the Philadelphia-Wilmington fine particulate ($PM_{2.5}$) nonattainment area (the Philadelphia Area). First, EPA is making a determination that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ national ambient air quality standard (NAAQS) by its attainment date of April 5, 2010. This determination is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period. Second, EPA is making a clean data determination, finding that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS, based on quality assured and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. In accordance with EPA's applicable $PM_{2.5}$ implementation rule, this determination suspends the requirement for the Philadelphia Area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 annual $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. These actions are being taken under the Clean Air Act (CAA).

DATES: This rule is effective on March 23, 2012 without further notice, unless EPA receives adverse written comment by February 22, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0714 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2011–0714, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0714. 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's action related to Delaware or Pennsylvania, please contact Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov*. If you have questions concerning EPA's action related to New Jersey, please contact Henry Feingersh, (212) 637–3382, or by email at *feingersh.henry@epa.gov*.

SUPPLEMENTARY INFORMATION: For detailed information regarding these actions, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at *http://www.regulations.gov*. The following outline is provided to aid in locating information in this action.

I. What are the actions that EPA is taking?

Pursuant to section 179(c) of the CAA, EPA is making a determination that the Philadelphia Area attained the 1997 $PM_{2.5}$ NAAQS by its attainment date, April 5, 2010. This determination is based upon quality assured and certified ambient air monitoring data for the 2007–2009 monitoring period that shows the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS during this monitoring period.

EPA is also making a clean data determination, finding that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 monitoring periods. After the effective date of this determination, the requirement for the Philadelphia Area to submit an attainment demonstration, RACM, an RFP plan, and contingency measures related to attainment of the 1997 $PM_{2.5}$ NAAQS shall be suspended for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. The States of Delaware and New Jersey, and the Commonwealth of Pennsylvania have submitted SIP revisions for their portions of the Philadelphia Area to EPA for review and approval.

II. What is the background for these actions?

A. The Philadelphia Area

On July 18, 1997, EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard'') (62 FR 36852). At that time, EPA also established a 24-hour standard of 65 $\mu g/m^3$ (the ''1997 24-hour standard''). *See,* 40 CFR 50.7. On January 5, 2005, EPA published its air quality designations for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003 (70 FR 944). These designations became effective on April 5, 2005. The Philadelphia Area, which includes the New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS during this designations process. *See,* 40 CFR 81.308, 81.832, and 81.339. The attainment date for the 1997 annual $PM_{2.5}$ NAAQS is as expeditiously as practicable, but no more than five years from the date of designation. *See,* 40 CFR 51.1004(a). Therefore, the attainment date for the Philadelphia Area is April 5, 2010.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations (the ''2006 24-hour standard''). On November 13, 2009, EPA published the area designations for the 2006 24-hour standard (74 FR 58688). That action, effective on December 14, 2009, designated the same Philadelphia Area as nonattainment for the 2006 24-hour standard and clarified that the Philadelphia Area is designated as unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ standard. This rulemaking only addresses the 1997 annual $PM_{2.5}$ standard and does not address the 1997 or the 2006 24-hour $PM_{2.5}$ standards.

In response to legal challenges of the 2006 annual standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. *See, American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Circuit 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

B. Requirement To Determine Attainment by the Attainment Date

Under CAA section 179(c), not later than six months after an areas attainment date, EPA is required to make a determination that a nonattainment area has attained by its attainment date. EPA is required to publish that determination in the **Federal Register**.

C. Clean Data Determination

Under the provisions of EPA's $PM_{2.5}$ implementation rule at 40 CFR 51.1004(c), if EPA issues a determination that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment), then the area's obligations to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment are suspended for as long as the area continues to attain. The clean data determination is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order for the area to be redesignated to attainment.

D. Ambient Air Quality Monitoring Data

The States of Delaware, and New Jersey, and the Commonwealth of Pennsylvania (''the States'') submitted quality assured air quality monitoring data into the EPA Air Quality System (AQS) database for the 2007–2009 and 2008–2010 monitoring periods. The States then certified that data. EPA's evaluation of this data shows that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS. Additional information on air quality data for the Philadelphia Area can be found in the TSD prepared for this action.

III. What are the effects of these actions?

These actions do not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Philadelphia Area will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for

redesignation to attainment, including an approved maintenance plan.

A. Determination of Attainment by the Attainment Date

EPA is making a determination that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. Therefore, EPA has met its requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date will be to discharge EPA's obligation under CAA section 179(c).

B. Clean Data Determination

EPA is making a determination that the Philadelphia Area is attaining the 1997 annual $PM_{2.5}$ NAAQS. This determination of attainment suspends the CAA requirements for the Philadelphia Area to submit an attainment demonstration and the associated RFP plan, contingency measures, RACM analysis, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS. These requirements remain suspended for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

The clean data determination suspends the requirement to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS. This suspension remains in effect until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 annual $PM_{2.5}$ NAAQS. This determination is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised $PM_{2.5}$ NAAQS. It remains in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised $PM_{2.5}$ NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements.

IV. What is EPA's analysis of the relevant air quality data?

The criteria for determining if an area is attaining the 1997 annual $PM_{2.5}$ NAAQS are set out in 40 CFR 50.13 and appendix N. The annual $PM_{2.5}$ NAAQS is met when the annual design value is less than or equal to 15.0 micrograms per cubic meter ($\mu g/m^3$). Three years of valid annual means are required to produce a valid annual standard design value. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

While most of the monitoring data submitted by the States was complete, several monitors in the Philadelphia Area had less than four quarters of complete data for one or more year in both the 2007–2009 and 2008–2010 monitoring periods. For these monitors, EPA applied the data substitution test set out in the April 1999 EPA guidance document ''Guideline on Data Handling Conventions for the PM NAAQS.'' This ''maximum quarter'' test is used for monitors with missing data. Maximum recorded values are substituted for the missing data. The resulting design value is compared to the standard. The monitor passes if the design value with maximum values substituted meets the standard.

Considering 2007–2009 data, six monitors had less than complete data, and five of those monitors passed the maximum quarter test. Therefore, while the five monitors had less than complete data, EPA's evaluation shows that the monitors meet the NAAQS. Data handling for the sixth monitor is discussed below.

Considering 2008–2010 data, four monitors had less than complete data, and all four monitors passed the maximum quarter test. Therefore, while the four monitors had less than complete data, EPA's evaluation shows that the monitors meet the NAAQS. Details of EPA's analysis are set out in the TSD prepared for this action.

The maximum quarter test could not be used to show attainment, considering 2007–2009 data, for one monitor located in Chester County, Pennsylvania. For this monitor, EPA performed a statistical analysis of the data, in which a linear regression relationship is established between the site with incomplete data and a nearby site which has more complete data in the period in which the incomplete site is missing data. The linear regression relationship is based on time periods in which both monitors were operating. The linear regression equation developed from the relationship between the monitors is used to fill in missing data for the incomplete monitor, so that the normal data completeness requirement of 75 percent of data in each quarter of the three years is met. After the missing data for the site is filled in, the results are verified through an additional statistical test. The results of EPA's statistical analysis indicated that while the Chester County, Pennsylvania monitor had less than complete data, the data is sufficient to demonstrate that the NAAQS has been met. Details of this analysis are set out in the TSD prepared for this action.

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the $PM_{2.5}$ ambient air monitoring data for the monitoring periods 2007–2009 and 2008–2010 for the Philadelphia Area, as recorded in the AQS database. On the basis of that review, EPA has concluded that the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS based on data for the 2007–2009 and 2008–2010 monitoring periods.

A. Determination of Attainment by the Attainment Date

According to the $PM_{2.5}$ implementation rule, the attainment date for the Philadelphia Area is April 5, 2010, and monitoring data from the period 2007–2009 is used to determine if the area attained by April 5, 2010. Table 1 shows the $PM_{2.5}$ design values for each monitor in the Philadelphia Area for the years 2007–2009. All 2007–2009 design values are below 15.0 $\mu g/m^3$ and EPA's evaluation shows that all monitors meet the NAAQS. Therefore, the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by its attainment date.

TABLE 1—2007–2009 ANNUAL $PM_{2.5}$ DESIGN VALUES, PHILADELPHIA AREA

State	County	Monitor ID	Annual mean ($\mu g/m^3$)			2007–2009 Design value ($\mu g/m^3$)
			2007	2008	2009	
Delaware	New Castle	100031003	13.4	13.0	10.2	12.2
		100031007	12.5	11.5	10.0	11.3

TABLE 1—2007–2009 ANNUAL $PM_{2.5}$ DESIGN VALUES, PHILADELPHIA AREA—Continued

State	County	Monitor ID	Annual mean (μg/m³)			2007–2009 Design value (μg/m³)
			2007	2008	2009	
		100031012	13.4	12.5	10.6	12.2
		100032004	14.4	13.5	11.2	13.0
New Jersey	Camden	340071007	13.8	11.9	9.5	11.7
	Gloucester	340150004	13.3	11.5	9.3	11.4
Pennsylvania	Bucks	420170012	13.0	12.7	10.8	12.2
	Chester	420290100	14.1	13.7	14.1	13.9
	Delaware	420450002	14.7	13.9	12.4	13.7
	Montgomery	420910013	13.1	11.7	10.4	11.7
	Philadelphia	421010004	13.7	13.0	10.8	12.5
		421010024	12.9	12.0	9.9	11.6
		421010047	14.3	13.5	11.1	13.0
		421010055	*	13.5	11.3	12.4
		421010057	12.0	13.3	11.1	12.1

*NOTE: Monitor 421010055 in Philadelphia County, Pennsylvania, started operating in 2008.

B. Clean Data Determination

Table 2 shows the $PM_{2.5}$ design values for each monitor in the Philadelphia Area for the years 2008–2010. All 2008–2010 design values are below 15.0 μg/m³ and EPA's evaluation shows that all monitors meet the NAAQS. Therefore, the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS.

TABLE 2—2008–2010 ANNUAL $PM_{2.5}$ DESIGN VALUES, PHILADELPHIA AREA

State	County	Monitor ID	Annual mean (μg/m³)			2008–2010 Design value (μg/m³)
			2008	2009	2010	
Delaware	New Castle	100031003	13.0	10.2	10.2	11.1
		100031007	11.5	10.0	10.0	10.5
		100031012	12.5	10.6	10.4	11.2
		100032004	13.5	11.2	10.6	11.7
New Jersey	Camden	340071007	11.9	9.5	9.5	10.3
	Gloucester	340150004	11.5	9.3	9.1	10.0
Pennsylvania	Bucks	420170012	12.7	10.8	10.5	11.3
	Chester	420290100	13.7	14.1	13.8	13.8
	Delaware	420450002	13.9	12.4	13.5	13.3
	Montgomery	420910013	11.7	10.4	9.5	10.5
	Philadelphia	421010004	13.0	10.8	10.7	11.5
		421010024	12.0	9.9	9.6	10.5
		421010047	13.5	11.1	11.0	11.9
		421010055	13.5	11.3	11.3	12.0
		421010057	13.3	11.1	10.9	11.7

V. Final Actions

EPA is making two determinations regarding the Philadelphia Area. First, EPA is making a determination that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This clean data determination suspends the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 annual $PM_{2.5}$ NAAQS, as provided in 40 CFR 51.1004(c), so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. Second, pursuant to section 179(c) of the CAA, EPA is making a determination that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its attainment date, April 5, 2010. These determinations are based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 monitoring periods.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 23, 2012 without further notice unless EPA receives adverse comment by February 22, 2012. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

This action makes determinations of attainment based on air quality, and result in the suspension of certain federal requirements. This action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this determination that the Philadelphia Area has attained the1997 annual $PM_{2.5}$ NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This determination that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and record-keeping requirements.

Dated: December 8, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

Dated: January 3, 2012.

Judith A. Enck,

Regional Administrator, Region II.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. Section 52.425 is added to read as follows:

§ 52.425 Determinations of Attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Philadelphia-Wilmington, PA–NJ–DE fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington, PA–NJ–DE $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

■ 3. Section 52.427 is added to read as follows:

§ 52.427 Control strategy: Particulate matter.

Determination of Attainment. EPA has determined, as of January 23, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Philadelphia-Wilmington, PA–NJ–DE nonattainment area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Subpart FF—New Jersey

■ 4. Section 52.1576 is added to read as follows:

§ 52.1576 Determinations of Attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Philadelphia-Wilmington, PA–NJ–DE fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington, PA–NJ–DE $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

■ 5. Section 52.1602 is amended by adding new paragraph (d) to read as follows:

§ 52.1602 Control strategy and regulations: $PM_{2.5}$.

* * * * *

(d) Determination of Attainment. EPA has determined, as of January 23, 2012, that the Philadelphia-Wilmington, PA–NJ–DE fine particle ($PM_{2.5}$) nonattainment area has attained the 1997 $PM_{2.5}$ National Ambient Air Quality Standard. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area

continues to attain the 1997 $PM_{2.5}$ NAAQS.

Subpart NN—Pennsylvania

■ 6. Section 52.2056 is amended by adding paragraph (f) to read as follows:

§ 52.2056 Determinations of Attainment.

* * * * *

(f) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Philadelphia-Wilmington, PA–NJ–DE fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington, PA–NJ–DE $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

■ 7. Section 52.2059 is amended by adding paragraph (e) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(e) Determination of Attainment. EPA has determined, as of January 23, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Philadelphia-Wilmington, PA–NJ–DE nonattainment area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

[FR Doc. 2012–1089 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2011–0407; FRL–9613–6]

New Mexico: Final Authorization of State-Initiated Changes and Incorporation-by-Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: During a review of New Mexico's regulations, the EPA identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this Direct Final action.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of New Mexico's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective March 23, 2012, unless the EPA receives adverse written comment on this regulation by the close of business February 22, 2012. If the EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the **Federal Register** approves this incorporation by reference as of March 23, 2012 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

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

2. *Email: patterson.alima@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), or Julia Banks, Codification Coordinator, Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–201–0407.

EPA's policy is that all comments received will be included in the public docket without change, including personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or email. The Federal *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *http://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, the 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 the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the 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 the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533 or (214) 665–8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator (214) 665–8533, or Julia Banks, Codification Coordinator, (214) 665–8178, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, or

email address *patterson.alima@epa.gov* or *banks.julia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Why are revisions to State programs necessary?

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

We conclude that New Mexico's revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make New Mexico's rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant New Mexico final authorization to operate its hazardous waste program with the changes described in the table at Section G below. New Mexico has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in New Mexico, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in New Mexico subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. New Mexico has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which New Mexico is being authorized by this direct action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization or the incorporation-by-reference of the State program, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes, or the incorporation-by-reference, on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization and incorporation-by-reference, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program or the incorporation-by-reference of the State program, we may withdraw only that part of this rule, but the authorization of the program changes or the incorporation-by-reference of the State program that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization or incorporation-by-reference of the State program will become effective and which part is being withdrawn.

F. For what has New Mexico previously been authorized?

The State of New Mexico initially received Final authorization effective January 25, 1985, (50 FR 1515) to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications effective April 10, 1990 (55 FR 4604); July 25, 1990 (55 FR 28397); December 4, 1992 (57 FR 45717); August 23, 1994 (59 FR 29734); December 21, 1994 (59 FR 51122); July 10, 1995 (60 FR 20238); January 2, 1996 (60 FR 53708) as affirmed by the EPA in the **Federal Register** notice published on January 26, 1996 (61 FR 2450)); March 10, 1997 (61 FR 67474); October 9, 2001 (66 FR 42140); October 16, 2007 (72 FR 46165); May 26, 2009 (74 FR 12625), and December 27, 2010 (75 FR 65432).

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting New Mexico final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 2008. The New Mexico provisions are from the New Mexico Administrative Code (NMAC), Title 20, Chapter 4, effective March 1, 2009.

State requirement	Analogous Federal requirement
NMAC 20.4.1.101 introductory paragraph	40 CFR 260.10 and 270.2 related; no direct Federal analog.
NMAC 20.4.1.301	40 CFR 262 related; no direct Federal analog.
NMAC 20.4.1.401	40 CFR 263.20(e) related; no direct Federal analog.
NMAC 20.4.1.801 introductory paragraph and 801.A	40 CFR 268.1(e)(3) related; no direct Federal analog.
NMAC 20.4.1.801.B	40 CFR 268.5, 268.6, 268.42(b), and 268.44(a)–(g) related; no direct Federal analog.
NMAC 20.4.1.901.B(5)	40 CFR 270.41 and 270.42(c) related; no direct Federal analog.
NMAC 20.4.1.901.B(6)	40 CFR 270.42(a) and (b) related; no direct Federal analog.
NMAC 20.4.1.1001 introductory paragraph	40 CFR 273 related; no direct Federal analog.
NMAC 20.4.1.1001.A(2)	40 CFR 273.12 and 273.32 related; no direct Federal analog.
NMAC 20.4.1.1001.B.	40 CFR 273.14 and 273.34 related; no direct Federal analog.
NMAC 20.4.1.1003	40 CFR 279.22 related; no direct Federal analog.

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in New Mexico?

New Mexico is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Incorporation-by-Reference

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of the codification of New Mexico's hazardous waste management program?

The EPA incorporated by reference New Mexico's then authorized hazardous waste program effective December 13, 1993 (58 FR 52677); August 21, 1995 (60 FR 32113); November 18, 1996 (61 FR 49265); July 13, 1998 (63 FR 23224); October 27, 2003 (68 FR 51487); and December 29, 2008 (73 FR 63897). In this document, the EPA is revising Subpart GG of 40 CFR part 272 to include the recent authorization revision actions effective May 26, 2009 (74 FR 12625) and December 27, 2010 (75 FR 65432).

C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify New Mexico's base hazardous waste management program and its revisions to that program. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the New Mexico program, and the EPA is not now reopening the decisions, nor requesting comments, on the New Mexico authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference New Mexico's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying New Mexico's authorized program and by amending the Code of Federal Regulations, the public will be able to more easily discern the status of Federally approved requirements of the New Mexico hazardous waste management program.

The EPA is incorporating by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. Section 272.1601 incorporates by reference New Mexico's authorized hazardous waste statutes and regulations. Section 272.1601 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of New Mexico's codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New Mexico procedural and enforcement authorities. Section 272.1601(c)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State provisions are not part of the codification?

The public needs to be aware that some provisions of New Mexico's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which New Mexico is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions that are ''broader in scope'' than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1601(c)(3) lists the New Mexico regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. ''Broader in scope'' provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of Federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

G. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821 January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This rule incorporates by reference New Mexico's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action 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 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of New Mexico's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended 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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective March 23, 2012.

List of Subjects in 40 CFR Parts 271 and 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), the EPA is granting final authorization under part 271 to the State of New Mexico for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted New Mexico final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994, December 21, 1994, July 10, 1995, January 2, 1996, March 10, 1997, October 9, 2001, October 16, 2007, May 26, 2009, and December 27, 2010.

(b) The State of New Mexico has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.*

(1) The New Mexico statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the New Mexico regulations that are incorporated by reference in this paragraph from the New Mexico Commission of Public Records, State Records Center and Archives, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. The statutes are available from Conway Greene Company, 1400 East 30th Street, Suite #402, Cleveland, OH 44114. You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665–8533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) The binder entitled ''EPA-Approved New Mexico Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'' dated December 2010.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) New Mexico Rules Annotated, Rules of Civil Procedure for the District Courts, Article 4, (1995), Section 1–024.

(ii) New Mexico Statutes 1978 Annotated, Inspection of Public Records Act, Chapter 14, Article 2, (2009 Cumulative Supplement), Sections 14–2–1 *et seq.*

(iii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2000 Replacement Pamphlet), Sections 74–4–4.1, 74–4–4.7.B and .C, 74–4–5, 74–4–7, 74–4–10.1 (except 74–4–10.1.C), and 74–4–14.

(iv) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2009 Cumulative Supplement), Sections 74–4–4, 74–4–4.2.C through 74–4–4.2.F, 74–4–4.2.G(1), 74–4–4.2.H, 74–4–4.2.I, 74–4–4.3 (except 74–4–4.3.A(2) and 74–4–4.3.F), 74–4–10, 74–4–11 through 74–4–13.

(v) Title 20, Chapter 4, Part 1, New Mexico Administrative Code, effective March 1, 2009, unless otherwise indicated: Sections 20.4.1.901 (except 20.4.1.901.B.1 through 20.4.1.901.B.7, and 20.4.1.901.E), 20.4.1.1100 (June 14, 2000), 20.4.1.1104 (June 14, 2000), 20.4.1.1105 (June 14, 2000), and 20.4.1.1107 (October 1, 2003).

(3)(i) The following statutory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2000 Replacement Pamphlet), Section 74–4–3.3.

(iii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2009 Cumulative Supplement), Sections 74–4–4.2.J and 74–4–4.2.K.

(4) *Unauthorized State Amendments.*

(i) The State's adoption of the Federal rules listed in the following table is not approved by the EPA and is therefore, not enforceable:

Federal requirement	**Federal Register** reference	Publication date
Biennial Report	48 FR 3977	01/28/83
Permit Rules; Settlement Agreement	48 FR 39611	09/01/83
Interim Status Standards; Applicability	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024)	49 FR 5308	02/10/84
National Uniform Manifest	49 FR 10490	03/20/84
National Performance Track Program	69 FR 21737	04/24/04
	69 FR 62217	10/24/04
Performance Track provisions addressed in the Burden Reduction Initiative Rule	71 FR 16862	04/04/06

(ii) In the New Mexico's Program Revision Application package for RCRA Clusters XIII through XVIII, the State indicates that it is seeking authorization for breaking and crushing of universal waste lamps under the universal waste program, in order to reduce their volume to facilitate management or transport to destination facilities (see 75

FR 65432, Oct. 25, 2010). However, EPA did not authorize the breaking and crushing of universal waste lamps. The Agency needs further analysis to determine if the breaking and crushing of universal waste lamps will be authorized as part of the State's authorized program. Therefore, in this codification notice EPA has determined to exclude the lamp crushing provisions from this codification.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of New Mexico, signed by the EPA Regional Administrator on October 12, 2010, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of New Mexico January 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988; September 14, 1988; July 19, 1989; July 23, 1992; February 14, 1994; July 18, 1994; July 20, 1994; August 11, 1994; November 28, 1994; August 24, 1995; January 12, 1996; June 14, 2000, August 3, 2006, September 15, 2008, and March 18, 2009, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the listing for ''New Mexico'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4 (2000 Replacement Pamphlet). Please note that for a few provisions the version found in the 2009 Cumulative Supplement to NMSA 74–4 is the approved version of the statutes.

Chapter 74, Article 4, Sections 74–4–2, 74–4–3 (except 74–4–3.A, 74–4–3.N, and 74–4–3.R) (2009 Cumulative Supplement), 74–4–3.1, 74–4–4.2.A and 74–4–4.2.B (2009 Cumulative Supplement), 74–4–4.2.G introductory paragraph (2009 Cumulative Supplement), 74–4–4.2.G(2) (2009 Cumulative Supplement), 74–4–4.3.F (2009 Cumulative Supplement), 74–4–4.7 (except 74–4–4.7.B and 74–4–4.7.C), 74–4–9, and 74–4–10.1.C, as published by Conway Greene Company, 1400 East 30th Street, Suite #402, Cleveland, OH 44114; Phone: (216) 619–8091; Web site: *http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0.*

The regulatory provisions include:

Title 20, Chapter 4, Part 1, New Mexico Annotated Code, effective March 1, 2009, unless otherwise indicated, Sections 20.4.100, 20.4.1.101, 20.4.1.200, 20.4.1.300, 20.4.1.301, 20.4.1.400, 20.4.1.401, 20.4.1.500, 20.4.1.501, 20.4.1.600, 20.4.1.601, 20.4.1.700, 20.4.1.701, 20.4.1.702, 20.4.1.800, 20.4.801, 20.4.1.900, 20.4.1.901.B.1 through 20.4.1.901.B.7, 20.4.1.901.E, 20.4.1.902, 20.4.1.1000, 20.4.1.1001 introductory paragraph, 20.4.1.1001.A(2), 20.4.1.1001.B, 20.4.1.1002, 20.4.1.1003, 20.4.1.1102 (June 14, 2000), and 20.4.1103 (October 1, 2003). Copies of the New Mexico regulations can be obtained from the New Mexico Commission of Public Records, State Records Center and Archives, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone: (505) 476–7907; Web site: *http://www.nmcpr.state.nm.us/nmac/titles.htm.*

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[FR Doc. 2012–999 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA947

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal To 60 Feet (18.3 Meters) Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2012 Pacific cod total allowable catch (TAC) specified for pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 20, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, (907) 586–7228.

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

The A season apportionment of the 2012 Pacific cod TAC allocated as a directed fishing allowance to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI is 9,950 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) and inseason adjustment (76 FR 81875, December 29, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2012 Pacific cod TAC allocated as a directed fishing allowance to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 17, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C.

553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 18, 2012.

Steven Thur,

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

[FR Doc. 2012–1241 Filed 1–18–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 14
Monday, January 23, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 312, 322, 350, 362, 381, 590, and 592

[Docket No. FSIS–2009–0026]

RIN 0583–AD41

Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the meat and poultry inspection regulations to provide for an electronic export application and certification system. The electronic export application and certification system will be a component of the Agency's Public Health Information System (PHIS). The export component of PHIS will be available as an alternative to the paper-based application and certification process. FSIS is proposing to charge users for the use of the proposed system. FSIS is proposing to establish a formula for calculating the fee. FSIS intends to publish notice of the fee, using the formula, in the **Federal Register** on an annual basis. FSIS is also proposing to provide flexibility in the requirements for official export inspection marks, devices, and certificates. In addition, FSIS is proposing to amend the egg product export regulations that parallel the meat and poultry product export regulations.

DATES: Submit comments on or before March 23, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

• *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

• Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Patriots Plaza 3, 1400 Independence Avenue SW., Room 8–163A, Mailstop 3782, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0026. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Ron Jones, Assistant Administrator, Office of International Affairs, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 3143, Washington, DC 20250–3700, (202) 720–3473.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470) provide for the export and certification of meat and poultry products. The Federal meat and poultry products inspection regulations require exporters to apply for official export certificates to ship federally inspected and passed meat and poultry products to foreign countries (9 CFR 322.2 and 381.105). The Federal meat and poultry products inspection regulations also contain specific requirements for the official marking of exported products, for the devices for marking shipping containers, and for the official export certificate (9 CFR 312.8, 322.1, 322.2, 381.104, 381.105, and 381.106).

The Agricultural Marketing Act (AMA) provides the Secretary of Agriculture with the authority to collect fees ''as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire'' (7 U.S.C 1622(h)).

Under the authority of the AMA, the meat and poultry regulations provide that FSIS may make certifications regarding exported meat and poultry products meeting conditions or standards that are not imposed, or that are in addition to those imposed, by the meat and poultry regulations, the FMIA, or the PPIA. Under 9 CFR 350.3(b), 350.7, 362.2(b), and 362.5, FSIS collects fees from establishments and facilities that request certification service that is in addition to the basic export certification of wholesomeness. FSIS is now proposing to establish a fee for utilizing a new electronic export application and certification system. The system will be a service FSIS will provide to exporters that will enable them to submit, track, and manage export applications and certificates more efficiently and effectively than is possible under the current system.

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056) does not set forth specific provisions for the export of egg products, and FSIS's egg products inspection regulations do not include requirements for exported egg products. As discussed below, FSIS is proposing egg products regulations to parallel the meat and poultry requirements, including a provision for inspectors to make certifications that egg products for export meet conditions or standards that are not imposed, or that are in addition to those that may be imposed, by the egg products regulations under the EPIA.

Export Application and Certification Process

Under 9 CFR 322.2(a) and 381.105(a), exporters of meat and poultry products may apply for an export certificate. The Application for Export Certificate (FSIS Form 9060–6) is available from inspection personnel, or exporters can submit a computer-generated (paper) copy. The poultry products regulations, in addition to requiring an application for an export certificate, provide for an ''upon request'' certification. The ''upon

request'' certification provides that an inspector will complete the application based on information supplied by the poultry exporter.

FSIS inspection personnel review the completed export application to verify that the information is correct and that it is signed. After inspection personnel reinspect product that is intended for export (9 CFR 322.2 and 381.105), they sign the application certifying that the product was examined in accordance with Agency policy.

As provided in 9 CFR 322.1(a) and 381.105(a), each shipping container is marked with the official export stamp bearing the serial number on the export certificate. Both 9 CFR 312.8(a) and 381.104 provide for an official device to apply the official export stamp. After the export application has been signed, inspection personnel provide the establishment with the official export stamp to mark product destined for export. After the shipping containers are marked, inspection personnel secure the stamp and sign the completed Meat and Poultry Export Certificate of Wholesomeness (FSIS Form 9060–5). The Meat and Poultry Export Certificate of Wholesomeness provides certification that the meat or poultry product originated from animals that received ante-mortem and post-mortem inspection and were found to be wholesome and fit for human consumption.

Both 9 CFR 312.8 and 381.106 provide that the export certificate is a paper certificate form for signature by a program employee or inspector, bearing a letterhead and the seal of the United States Department of Agriculture, and a serial number.

The regulations also require that the export certificate be issued in triplicate for meat products and in duplicate for poultry products. The meat and poultry products inspection regulations include specific requirements for where and to whom the original, duplicate, and triplicate are to be distributed (9 CFR 322.2 (d), (e), and (f), and 381.105(b) and (c)).

The Public Health Information System (PHIS)

FSIS is implementing the Public Health Information System (PHIS), a computerized, Web-based inspection information system. The PHIS will integrate and automate the Agency's paper-based business processes into one comprehensive and fully automated data-driven inspection system. The PHIS will significantly improve the Agency's efforts to collect, consolidate, and analyze data in order to improve public health. The PHIS includes an export component that will streamline and automate the export application and certification process.

The PHIS export component will enable exporters to electronically submit, track, and manage export applications and certificates. For example, exporters will be able to access their online account to submit applications, delay the issuance of a certificate, cancel pending applications and certificates, and apply for replacement or ''in lieu of'' certificates. Exporters that submit paper applications will not be able to submit, track, or manage their applications and certificates in this manner. FSIS inspection personnel will be able to access the PHIS to electronically approve export applications and certificates.

FSIS will consider any data and the electronic records (applications and certifications) submitted and processed through the PHIS equivalent to paper records. Export certifications transmitted electronically are official.

To access and use the PHIS export component, exporters will need to register for an USDA eAuthentication account with Level 2 access. An eAuthentication account enables individuals within and outside of the USDA to obtain user-identification accounts to access a wide range of USDA applications through the Internet. The Level 2 access will provide users the ability to conduct official electronic business transactions. To register for a Level 2 eAuthentication account, the user will need to have access to the Internet and a valid email address. To learn more about eAuthentication and how to register for an account, visit *http://www.eauth.egov.usda.gov/.*

The Agency plans to provide exporters with more specific, detailed information on how to access the PHIS to submit export applications and manage export certificates. The Agency intends to provide exporters with assistance and technical support in obtaining Level 2 eAuthentication access and in accessing and navigating the PHIS export component. Any information concerning the implementation of the PHIS export component will be posted on the Agency's Web site at *www.fsis.usda.gov.*

When developing, procuring, maintaining, or using electronic and information technology (EIT), Federal agencies are required by Section 508(a)(1)(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)) to ensure that the EIT is accessible to people with disabilities, including employees and members of the public. The PHIS will meet these requirements.

Proposed Amendments

Export Applications and Certificates

The meat and poultry regulations provide for a paper-based export application and certification process. To facilitate the use of the PHIS export component, FSIS is proposing to amend the meat and poultry regulations to provide for the electronic submission, approval, and issuance of export applications and certificates. The Agency is proposing that applications for export certificates may be either paper-based or electronic.

FSIS is proposing these amendments to facilitate the electronic processing of export applications and certificates. The Agency is not proposing to require that exporters submit export applications electronically through the PHIS export component. Under this proposed rule, exporters would have the option to submit export applications electronically or continue to use the paper-based application process. The proposed charge for use of the electronic system is discussed below.

FSIS meat and poultry products inspection regulations require exporters to apply for an export certificate and specify that FSIS inspectors provide poultry export certification of any inspected and passed poultry product ''upon request'' (9 CFR 381.105(a)). The ''upon request'' certification contemplates that an inspector will complete the application form based on information supplied by the poultry exporter.

The ''upon request'' provision is obsolete, however, and no longer reflects poultry export application practices. The exporter fills out most, if not all, poultry products export applications. In addition, the ''upon request'' provision will not be an option for submitting on-line export certification applications under the PHIS. Therefore, the Agency is proposing to delete the phrase ''upon request'' in 9 CFR 381.105(a). Because exporters typically do not request that the inspector complete the poultry products export application, this change in the regulations should place little, if any, burden on exporters.

FSIS is also proposing to delete the export certificate requirements in 9 CFR 312.8(b) and 381.106. These regulations contain specific certificate requirements, *e.g.,* signature by a program employee and bearing a letterhead and the official seal of the U.S. Department of Agriculture. The Meat and Poultry Export Certificate of Wholesomeness is an approved FSIS Form (9060–5), generated by the Agency and issued by FSIS inspection

personnel. Through FSIS Directive 9000.1, Revision 1, the Agency provides instructions to inspection personnel concerning the approval of export applications (FSIS Form 9060–6) and issuance of certificates. Therefore, FSIS does not need to include specifications for the export certificate and instructions for its issuance in the regulations.

FSIS is also proposing to amend 9 CFR 322.2 and 381.105 to delete references to ''triplicate'' and ''duplicate'' forms. The Agency is proposing to allow ''copies'' of the export certificate to be distributed to the required parties and to accompany the product. In addition, FSIS is proposing to delete the provisions in 9 CFR 322.2(d) for filing a copy of the export certificate with Customs within four (4) business days of the clearance of the vessel at the time of filing the complete manifest. The filing of the export certificate with Customs is a Department of Homeland Security, Customs and Border Protection, requirement (19 CFR 4.75(b))and need not be included in FSIS regulations.

FSIS is also proposing to amend the meat and poultry export regulations to organize and make parallel, to the extent possible, the regulatory requirement language for meat and poultry products. Under the proposed rule, differences will remain between the meat and poultry export regulations because the provisions for lard or similar edible product (proposed 9 CFR 322.1(b)) do not apply to poultry. Also, the FMIA provides that FSIS will file one copy of the export certificate, that one copy will be delivered to the owner or shipper, and that one copy will be delivered to the chief officer of the vessel on which the shipment shall be made (21 U.S.C. 618). Proposed 9 CFR 322.2 (c), (d), and (e) reflect those statutory requirements. Because the PPIA does not include such requirements, FSIS is not proposing to include them in this rule. Under circumstances specified in the regulations, exporters of meat products may request inspection personnel to issue certificates for export of product of official establishments not under their supervision (9 CFR 322.2(h)). The poultry export regulations do not provide for this option, but FSIS provides for this in practice in poultry products. Therefore, FSIS is proposing poultry product export regulations consistent with the meat export regulations to reflect this practice (proposed 9 CFR 381.106(e)).

Export Inspection Marks and Devices

As discussed above, FSIS's regulations require meat and poultry products exporters to apply for an export certificate. After the export application is approved, inspection personnel provide the export stamp and authorize the establishment to mark products destined for export. The serial number on the export stamp must correspond to the serial number on the export certificate signed by inspection personnel (9 CFR 312.8(a) and 381.104).

FSIS is proposing to amend 9 CFR 312.8(a) and 381.104 to provide an alternative method of identifying and marking containers of product destined for export. This proposed flexibility would permit exporters to mark product containers with a unique identifier. Under the proposal, the unique identifier must link the exported product to the export certificate issued by inspection personnel. The Agency is proposing this flexibility in the marking of shipping containers because of the technological advancements that have been made since the export marking and devices regulations were initially promulgated. By providing flexibility to the official export stamp and how it can be applied to products, the time between production and shipping can be shortened, reducing the storage and other associated costs to the industry.

Egg Products Export Regulations

As previously discussed, the EPIA does not set forth specific provisions for the export of egg products, and the FSIS egg products inspection regulations do not include requirements for exported egg products. The egg products inspection regulations provide that, upon request, an inspector may issue an egg product inspection and grading certificate. The exporter can present the certificate to foreign countries as certification that egg products were inspected and passed and are wholesome and fit for human consumption (9 CFR 590.402).

The EPIA authorizes FSIS to regulate egg products for the purpose of preventing and eliminating burdens upon interstate and foreign commerce (21 U.S.C. 1031). Because almost all foreign countries require export certification for imported egg products, FSIS is proposing to amend the egg products export regulations under 21 U.S.C 1043 to add export application and certification requirements in 9 CFR 590.407, ''Export certification and marking of containers with export inspection mark.'' This proposed section parallels, to the extent possible, the export requirements in the meat and poultry regulations that provide for the application, certification, and marking of product destined for export. This proposed export certification will provide the basic egg products export certificate required by foreign countries. Exporters that submit paper-based applications for the basic egg products export certification will not be charged for the certificate.

FSIS is proposing to add 9 CFR 592.20(d) to provide that export certifications that products meet conditions or standards that are not imposed, or that are in addition to those imposed by the egg products regulations, will be subject to a charge as a reimbursable service. The proposed provisions are consistent with the 9 CFR 350.3(b) and 362.2(b), which are discussed in the following paragraph.

Charge for Electronic Export Application and Certification Process

As discussed above, under the authority of the AMA, the meat and poultry inspection regulations provide that when exporters request certification that is in addition to the basic export certification of wholesomeness required by regulation, FSIS charges and collects fees from establishments and facilities that request this service (9 CFR 350.3(b), 350.7, 362.2(b), and 362.5). Exporters request additional certifications to meet requirement imposed by the importing foreign countries.

The PHIS's export component will provide new service options to exporters enabling them to electronically submit, track, and manage their export applications and certificates. Therefore, the Agency is proposing to charge exporters that utilize the PHIS export component a fee for recovering the Agency's costs for providing the electronic export application and certification service. The proposed fee is for application for the basic export certificate. Any additional certifications that are imposed by the importing foreign country will be charged as a certification service, as provided by 9 CFR 350.3(b) and 362.2(b) for meat and poultry products, and, as discussed above, is proposed for egg products in 9 CFR 592.20(d). These additional export certifications are charged at the appropriate basetime, overtime, or holiday rate, depending on when the certification service is provided. The basic export certification, if provided outside of an inspector's normal shift is also charged at the appropriate rate (overtime or holiday).

To calculate the appropriate fee for providing the electronic export application and certification service, the Agency is proposing to establish the following formula for assessing its costs: The labor costs (*i.e.,* direct inspection labor cost for inspection personnel +

technical support provided to users of the export component + export library maintenance), + the Information Technology (IT) costs (*i.e.,* on-going operations + maintenance of the system cost + eAuthentication cost), divided by the number of export applications (see below).

PHIS Export Application Fee:

$$\frac{\text{Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + IT Costs (On-going Operations and Maintenance + eAuthentication)}}{\text{\# Export Applications}}$$

If the FSIS adopts this proposal, it will calculate the fee on an annual basis, and the updated fees will apply at the start of each calendar year. Should this rule become final, FSIS will announce the fee and the effective date in the preamble of the final rule. In addition, FSIS will publish notice of the fee, using the formula in the final rule, in the **Federal Register** approximately 30 days prior to the start of each new calendar year.

For purposes of this proposed rule, FSIS has calculated the fees based on the 2012 basetime rates published on December 23, 2011 (76 FR 80326) and the Agency's best estimates for on-going operations and maintenance. FSIS has also estimated the number of export applications that it is likely to receive. For the final rule and subsequent calendar year calculations, FSIS expects that it will obtain more precise data, from documents and other sources, to calculate the actual fee.

The proposed calendar year 2012 PHIS Export Application Fee is based on the following costs, rates, and best available data:

- Direct inspection personnel labor costs at the 2012 basetime rate ($54.24/hour), at an estimated 15 minutes ($54.24/4 or $13.56) per application ($13.56 * 235,121), is $3,188,204.70.
- The cost of providing technical support, which includes service desk support, is $500,000.
- The 2012 annual cost for funding two full time employees (average salary) to provide export library functions is approximately $200,000.
- The on-going operations and maintenance costs, including improvements and necessary repairs to keep the system responsive to user's needs, is $2,675,000.
- The cost of providing and supporting eAuthentication, the system for accessing the PHIS, is currently $0. However, this cost may increase in future years.
- The estimated number of yearly export applications, determined using the Agency's Performance Based Inspection System, is 235,121.

The calculation of the 2012 Export Application Fee is:

$$\frac{[(\$3,188,204.70) + (\$500,000) + \$200,000)] + [(\$2,675,000)] + (\$0)]}{235,121}$$

Based on the above calculation, FSIS is proposing $27.91 as the calendar year 2012 PHIS Export Application Fee. Exporters would be charged the $27.91 fee for submitting an export application, and the fee will be assessed regardless of whether an export certificate is issued.

Executive Order 12988

This proposed rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been reviewed under Executive Order (E.O.) 12866. It has been determined to be significant, but not economically significant, under section 3(f) of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

FSIS is proposing changes to the meat and poultry regulations to provide for an electronic export application and certification system. The use of the proposed electronic export application system will be voluntary. FSIS is proposing to charge exporters that choose to utilize the system $27.91 per application submitted. Automating the export application and certification process will facilitate the exportation of U.S. meat, poultry, and egg products by streamlining and automating the processes that are in use while ensuring that foreign regulatory requirements are met. In addition, FSIS is proposing to add export application and certification requirements to the egg products regulations that parallel the meat and poultry regulations. Currently, exporters are issued an inspection and grading certificate.

Cost of the Proposed Action

If this proposed rule is adopted, and the cost basis does not change, the direct cost to exporters of $27.91 per export application would be approximately $6.6 million per year, if they all choose to file electronically. The indirect costs under this proposed rule would be the Internet service and the acquisition of or upgrading a current computer system to one that would be compatible with the PHIS and meet digital standards developed by the National Institute of Standards and Technology, American Standards Institute, and the International Organization for Standardization. These indirect costs are indeterminable. However, the total cost to an exporter would depend on the number of electronic applications processed. An exporter that processes only a few applications per year would not likely

experience a significant economic impact.

There are no direct costs associated with obtaining the Level 2 eAuthentication access needed to use the PHIS.

Exporters that do not submit applications electronically through the PHIS and request export certification that the product meets conditions or standards that are not imposed, or that are in addition to those imposed by regulations, would continue to pay for the reimbursable services (9 CFR 350.7, 362.5, and 592.500).

The total annual paperwork burden to egg exporters to fill out the paper-based export application is $123,333 per year for a total of 3,333 [1] hours a year. The average exporter burden would be 16.7 hours, and $617 per exporter. There is no annual paperwork burden to meat and poultry exporters since they are currently filling out the export application.

Expected Benefits of the Proposed Rule

The proposed electronic export application and certification system, is expected to reduce the exporter and inspection personnel workload and paperwork burden by eliminating the physical handling and processing of applications and certificates. The reduction in workload and paperwork burden is based on the greater efficiency of processing applications electronically and the number of applications filed electronically. Quantifiable reductions are indeterminate at this time.

The PHIS export component facilitates the electronic government-to-government exchange of export applications and certifications, which will assist in the resolution of allegations of fraudulent transactions, such as false alterations and reproductions. The PHIS is designed to ensure authenticity, integrity, and confidentiality. The Level 2 eAuthentication provides exporters with the ability to conduct official electronic transactions with the USDA through the Internet. Exporters will be provided a more efficient and effective application and certification process.

An indirect benefit of automating the export application and certification system is that there will be an automatic, electronic recordkeeping of the number and types of exporters, the types of products exported to various countries, and the number of applications and certificates issued. There is no recordkeeping burden to exporters because all transactions will be electronically recorded, and the data will be retrieved in real time. The electronic export system will provide a seamless, integrated, and streamlined approach to processing applications and certificates. It is expected that any potential general problems can be resolved electronically before the product arrives at the port, and as a result the products will likely move through ports faster. Thus, storage costs will be reduced or eliminated during the time it would take to resolve any application or certification issues, and the product will reach its destination more quickly. The cost savings of moving products faster and reducing storage costs are a function of the value of the goods and the amount of the reduction of the period of time in storage; with higher valued goods and greater reductions in storage period, these cost savings will increase. The value of goods and the reduction in storage time are variables that are not known to FSIS. The Agency is seeking comments on these and other potential benefits of the electronic export application and certification system.

For all exporters that submit the applications electronically, there will be additional unquantifiable benefits because PHIS automates the verification of eligibility and accuracy of certifications needed, and will speed up the process for these establishments. Even exporters who use the paper-based system will benefit from the PHIS export component. FSIS will enter the application into the PHIS, and the FSIS verifications activities regarding eligibility and accuracy of certifications will be automated. The certification will be made per specifications of the foreign government (*e.g.,* paper, electronic, or digital image).

Proposing egg product export regulations provides the same export requirements across all products regulated by FSIS, and consistency in the export application and certification process. Currently, upon request, inspection and grading certificates are issued for exported egg products. This proposed rule provides the exported egg products certification that is required by most foreign countries. Consistent export requirements for meat, poultry, and egg products increase administrative efficiency, provide clarity, and allow egg products exporters to benefit from the new electronic export certification system.

FSIS Budgetary Effects

FSIS cannot predict how many exporters will choose to submit electronic export applications through the export component of PHIS. When exporters choose to submit an application, they will be charged $27.91. Assuming that the number of yearly export certificates remains at approximately 235,121, the revenues generated from this new fee will be approximately $6.6 million each year.

Regulatory Flexibility Analysis

The FSIS Administrator has determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed changes will affect those entities in the United States that export meat, poultry, and egg products to foreign countries. There are 6,099 meat and poultry establishments that could possibly be affected by this proposed rule since all are eligible to export. Of this number, there are about 2,616 small federally inspected establishments (with more than 10 but less than 500 employees) and 3,103 very small establishments (with fewer than 10 employees) based on HACCP Classification.[2] Therefore, a total of 5,719 small and very small establishments could be possibly affected by this rule.

For the meat and poultry industries, small and very small exporters, like large exporters, would incur the $27.91 fee only if they file their export application electronically. If they choose to submit the paper application, they will bear no additional cost compared to now. If exporters submit their applications electronically, the average annual cost from this rule would be $1,075.95 per exporter (235,121 export applications per year/ 6,099 meat and poultry establishments * $27.91 per application). For egg product exporters, FSIS expects the number of applications submitted to be 20,000.[3] Using the $27.91 fee, the cost per exporter would be $2,791. If small establishments require fewer applications, then the cost per small establishment is even lower. Therefore, the Agency believes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

In making its determination, the Agency considered two alternatives: (1) The status quo (only paper-based export applications) and (2) require exporters to submit electronic export applications and charge an application fee for the service. The status quo alternative was

[1] Hours are derived from estimates of 200 for the number of exporters, 100 for the number of responses per exporter, and 10 minutes to complete and submit an application.

[2] Establishment numbers from FSIS's Performance Based Inspection System, June 2011.

[3] See Footnote 1, page 21.

rejected, because electronic export applications are necessary to implement the PHIS export component. Without the electronic export application alternative, exporters will not reap the benefits of the PHIS's export component.

The second alternative, to make the electronic export application mandatory and charging a fee, was rejected because export certificates are a regulatory requirement, and the paper-based application process (at no charge) must be available to exporters. The proposed rule would provide for both the paper-based and electronic export application process, which will minimize the impact on small entities because it will allow them, as well as other exporters, to continue using the paper-based application process. To make electronic export applications mandatory would have a significant impact on a substantial number of small entities, because the $27.91 fee would increase the cost of exporting and may be a disadvantage to small entities because they will not have the option to continue to submit paper-based applications. However, small entities may choose to utilize the electronic system because it offers the ability to electronically track and manage the application and certification process. The $27.91 fee would have to be absorbed by the small entities or passed along to their customers, which could negatively impact their bottom line if a large percentage of their business is exports because they are priced out of the market.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Proposed_Rules/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule (for egg products on the Application for Export Certificate, FSIS Form 9060–6) have been submitted for approval to OMB as part of the Public Health Information System (PHIS) information collection request.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

List of Subjects

9 CFR Part 312

Official Marks, Devices and Certificates.

9 CFR Part 322

Exports.

9 CFR Part 350

Special Services Relating to Meat and Other Products.

9 CFR Part 362

Voluntary Poultry Inspection Regulations.

9 CFR Part 381

Poultry Products Inspection Regulations.

9 CFR Part 590

Inspection of Eggs and Egg Products (Egg Products Inspection Act).

9 CFR Part 592

Voluntary Inspection of Egg Products.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR chapter III as follows:

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for Part 312 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Revise § 312.8 to read as follows:

§ 312.8 Export inspection marks.

The export inspection mark required in § 322.1 must be either a mark that contains a unique identifier that corresponds to the export certificate or an official mark with the following form: [1]

[1] The number ''529893'' is given as an example only. The number on the mark will correspond to the export certificate.

PART 322—EXPORTS

3. The authority citation for Part 322 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Revise § 322.1 to read as follows:

§ 322.1 Marking products for export.

(a) When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, with an export inspection mark as shown in § 312.8 of this subchapter.

(b) When authorized by inspection personnel, establishments must mark each tank car of inspected and passed lard or similar edible product, and each door of each railroad car or other closed means of conveyance, containing inspected and passed loose product shipped directly to a foreign country, with an export inspection mark as shown in § 312.8 of this subchapter.

5. Revise § 322.2 to read as follows:

§ 322.2 Export certification.

(a) Exporters must apply for export certification of inspected and passed products shipped to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 350.7(e).

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement or an in lieu of paper certificate, except in the case of a lost certificate, must be accompanied by the original paper certificate. The new certificate will carry the following statement: ''Issued in lieu of ____'', with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the certificate to the shipper or exporter. The shipper or exporter may furnish the copy of the certificate to the consignee for purposes of affecting the entry of product into the foreign country of destination.

(d) The shipper or exporter must deliver a copy of the certificate to the agent of the railroad or other carrier that transports the consignment from the United States otherwise than by water, or to the chief officer of the vessel on which the export shipment is made, or to the vessel's agent. The copy must be used only by such carrier and only for the purpose of affecting the transportation of the consignment certified.

(e) FSIS will retain a copy of the certificate.

(f) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been ''U.S. inspected and passed,'' are found to be neither adulterated nor misbranded, and are marked as required by § 322.1.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

6. The authority citation for Part 350 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

7. In § 350.7 add paragraphs (e), (f), and (g) to read as follows:

§ 350.7 Fees and Charges.

* * * * *

(e) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(f) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(g) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

8. The authority citation for part 362 continues to read as follows:

Authority: 7 U.S.C 1622; 7 CFR 2.18(g) and (i) and 2.53.

9. In § 362.5, add paragraphs(e), (f), and (g) to read as follows:

§ 362.5 Fees and charges.

* * * * *

(e) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(f) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(g) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138F, 450, 21 U.S.C., 451–470, 7 CFR 2.7, 2.18, 2.53.

11. Revise § 381.104 to read as follows:

§ 381.104 Export inspection marks.

The export inspection mark required in § 381.105 must be either a mark that contains a unique identifier that corresponds to the export certificate or an official mark with the following form: [1]

12. Revise § 381.105 to read as follows:

§ 381.105 Marking products for export.

When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, with an export inspection mark as shown in § 381.104 of this subchapter.

13. Revise § 381.106 to read as follows:

§ 381.106 Export certification.

(a) Exporters must apply for export certification of inspected and passed products to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 362.5(e).

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request

[1] The number ''529893'' is given as an example only. The number on the mark will correspond to the export certificate.

for a replacement or in lieu of paper certificate, except in the case of a lost certificate, must be accompanied by the original paper certificate. The new certificate will carry the following statement: ''Issued in lieu of ____'', with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the certificate to the person who requested such certificate or his agent. Such persons may duplicate the certificate as required in connection with the exportation of the product.

(d) FSIS will retain a copy of the certificate.

(e) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been ''U.S. inspected and passed,'' are found to be neither adulterated nor misbranded, and are marked as required by § 381.105.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

14. The authority citation for Part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

15. Add § 590.407 to read as follows:

§ 590.407 Export certification and marking of containers with export inspection mark.

(a) Exporters must apply for export certification of inspected and passed products shipped to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 592.500(d).

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement or in lieu of paper certificate, except in the case of a lost certificate, must be accompanied by the original paper certificate. The new certificate will carry the following statement: ''Issued in lieu of ____'', with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the export certificate to the person who requested such certificate or his agent. Such persons may duplicate the certificate as required in connection with the exportation of the product.

(d) FSIS will retain a copy of the certificate.

(e) When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed egg products destined for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, with a mark that contains a unique identifier that corresponds to the export certificate or an export inspection mark with the following form:[1]

(f) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been ''U.S. inspected and passed,'' are found to be neither adulterated nor misbranded, and are marked as required by paragraph (e) of this section.

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

16. The authority citation for Part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

17. In § 592.20 add paragraph (d) to read as follows:

* * * * *

(d) Export certification. Upon application, by any person intending to export any egg product, inspectors may make certifications regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in the part and the laws under which such regulations were issued.

17. Revise § 592.500 paragraph (a) and add paragraphs (d), (e), and (f) as follows:

§ 592.500 Payment of fees and charges.

(a) Fees and charges for voluntary base time rate, overtime inspection service, holiday inspection service, and electronic export applications shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and § 592.510 through § 592.530, both inclusive. If so required by the inspection personnel, such fees and charges shall be paid in advance.

* * * * *

(d) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(e) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(f) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

Done at Washington, DC, on January 11, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–1158 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–DM–P

[1] The number ''529893'' is given as an example only. The number on the export certificate will correspond to the export certificate.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325, Subpart C

RIN 3064–AD91

Annual Stress Test

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Federal Deposit Insurance Corporation (the ''Corporation'' or ''FDIC'') requests comment on this proposed rule that implements the requirements in Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') regarding stress tests (''proposed rule''). This proposed rule would implement section 165(i)(2) by requiring state nonmember banks and state savings associations supervised by the Corporation with total consolidated assets of more than $10 billion to conduct annual stress tests in accordance with the proposed rule, report the results of such stress tests to the Corporation and the Board of Governors of the Federal Reserve System (''Board'') at such time and in such a form containing the information required by the Corporation, and publish a summary of the results of the required stress tests.

DATES: Comments should be received on or before March 23, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *Email: Comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AD91.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: George French, Deputy Director, Policy, (202) 898–3929, Robert Burns, Associate Director, Mid-Tier Bank Branch, (202) 898–3905, or Karl R. Reitz, Senior Capital Markets Specialist, (202) 898–6775, Division of Risk Management and Supervision; Mark G. Flanigan, Counsel, (202) 898–7426, or Ryan K. Clougherty, Senior Attorney, (202) 898–3843, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of Section 165(i) of the Dodd-Frank Act

Section 165(i)(2) of the Dodd-Frank Act requires the Corporation to issue regulations that require FDIC-insured state nonmember banks and FDIC-insured state-chartered savings associations with total consolidated assets of more than $10 billion (''covered banks'') to conduct annual stress tests (''bank-run stress tests'').

For these stress tests, section 165(i)(2) requires that the Corporation issue regulations that: (1) Define the term ''stress test'' for purposes of the regulations; (2) establish methodologies for the conduct of the stress tests that provide for at least three different sets of conditions, including baseline, adverse, and severely adverse conditions; (3) establish the form and content of a required report on the stress tests that banks subject to the regulation must submit to the Corporation; and (4) require covered banks to publish a summary of the results of the required stress tests.

Section 165(i)(2)(C) of the Dodd-Frank Act requires the Corporation, in coordination with the Board and the Federal Insurance Office, to issue consistent and comparable regulations to implement the requirements of this section. This proposed rule implements section 165(i)(2) as described further below.

B. Overview of Proposed Rule

1. Annual Stress Tests

a. *Purpose*

The Corporation views the bank-run stress tests required under the proposed rule as providing forward-looking information to assist the Corporation in its overall assessment of a covered bank's capital adequacy, helping to better identify potential downside risks and the potential impact of adverse outcomes on the covered bank's capital adequacy, and to assist it in ensuring the institution's financial stability. Further, these stress tests are expected to improve the quality of covered banks' internal assessments of capital adequacy and overall capital planning.

The proposed rule would require covered banks to conduct annual stress tests. The proposed rule defines a stress test as a process to assess the potential impact on a covered bank of economic and financial conditions (''scenarios'') on the consolidated earnings, losses and capital of the covered bank over a set planning horizon, taking into account the current condition of the covered bank and its risks, exposures, strategies, and activities.

The Corporation expects that the stress tests required under the proposed rule would be one component of the broader stress testing activities conducted by covered banks. The broader stress testing activities should address the impact of a broad range of potentially adverse outcomes across a broad set of risk types affecting other aspects of a bank's financial condition beyond capital adequacy alone. For example, under existing guidance, supervisors expect banks to evaluate their liquidity under stressed conditions and their exposure to changes in interest rates.[1] In addition, a full assessment of a bank'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 other factors. The Corporation notes that the stress tests described in the proposed rule focus on capital adequacy and do not focus on other aspects of financial condition.

b. *Applicability*

The proposed rule would apply to covered banks. Covered banks are defined under the proposed rule as any state nonmember bank or state-chartered savings association that has more than $10 billion in total consolidated assets, as determined based on the average total consolidated assets as reported on the state nonmember bank's four most recent Consolidated Reports of Condition and Income (''Call Reports'') or on the state savings association's four most recent Thrift Financial Reports (''TFRs''), respectively. Once a state nonmember bank or state savings association becomes a covered bank, it will remain so for purposes of the proposed rule unless and until the state nonmember bank or state savings association has $10 billion or less in total consolidated assets as determined on each of, for state nonmember banks, the four most recent Call Reports or, for state savings associations, each of the four most recent TFRs.

The Corporation may accelerate or extend any specified deadline for stress testing if the Corporation determines such modification is appropriate in light of the institution's activities, operations, risk profile, or regulatory capital.

c. *Process Overview*

Except as otherwise provided in the proposed rule, a bank that becomes a covered bank no less than 90 days before September 30 of any given calendar year must comply with the requirements, including the timing of required submissions to the Corporation, of the proposed rule from September 30 forward. With respect to initial applicability, a bank that is a covered bank on the effective date of the proposed rule is subject to the proposed requirements as of the effective date, including the timing of required submissions to the Corporation. The Corporation expects to use the following general process and timetables in connection with the stress tests.

i. *Reporting by Covered Banks*

Under the proposed rule, the Corporation would collect the covered bank's stress test results and additional qualitative and quantitative information about the tests on a confidential basis. The Corporation plans to publish notice of both specific requirements and related instructions for the report to be

[1] On June 15, 2011, the Corporation, along with the other banking agencies, published for comment proposed guidance on covered banks' stress testing as a part of overall institution risk management. The guidance included stress testing non-capital related aspects of financial condition. (76 FR 35072)

submitted to the Corporation, as described below. Following the annual stress test, each covered bank would be required to publish a summary of its results.

ii. *Annual Stress Test*

Each year, in advance of the annual stress test required of all covered banks on a schedule to be established, the Corporation would provide to such banks at least three scenarios, including baseline, adverse, and severely adverse, that each covered bank must use to conduct its annual stress test required under the proposed rule.

iii. *Proposed Steps for Annual Stress Test*

Table A below describes proposed steps for the stress test cycle for covered banks, including proposed general time frames for each step. The proposed time frames are illustrative and are subject to change.

TABLE A—PROCESS OVERVIEW OF ANNUAL STRESS TEST CYCLE

[Using data as of September 30]

Step	Proposed timeframe
1. FDIC provides covered banks with scenarios for annual stress tests	No later than mid-November.
2. Covered banks submit required regulatory reports to the FDIC on their stress tests	By January 5.
3. Covered banks make required public disclosures	By early April.

d. *Overview of Stress Test Requirements*

i. *General Requirements for Stress Tests*

Under the proposed rule, each covered bank would be required to conduct annual stress tests using the bank's financial data as of September 30 of that year to assess the potential impact of different scenarios on the consolidated earnings and capital of that bank and certain related items over a nine-quarter forward-looking planning horizon, taking into account all relevant exposures and activities.

The Corporation recognizes that certain parent company structures of covered banks may include one or more financial companies, each with total consolidated assets greater than $10 billion. The stress test requirements of section 165(i)(2) apply to the parent company and to each subsidiary financial company (including covered banks) regulated by a primary federal financial regulatory agency that has more than $10 billion in total consolidated assets. To avoid unnecessary complexity or duplication of effort associated with this requirement, the Corporation intends to coordinate with the other primary federal financial regulatory agencies, to the extent needed. For example, the Corporation will aim to coordinate, as appropriate, with the other primary federal financial regulatory agencies in providing scenarios to be used by multiple entities within a holding company structure when meeting the requirements of the stress tests described in the proposed rule.

ii. *Scenarios*

The proposed rule would require each covered bank to use a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios, or such additional conditions as the Corporation determines appropriate. The Corporation would provide at least three scenarios (baseline, adverse, and severely adverse) in advance of the annual stress tests.

iii. *Methodologies and Practices*

Under the proposed rule, each covered bank 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, the impact on its potential losses, pre-provision revenues, loan loss reserves, and *pro forma* capital positions over the planning horizon, including the impact on capital levels and ratios. Each covered bank 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 Corporation.

The proposed rule would require each covered bank 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 bank are effective in meeting the requirements of the proposed rule. The covered bank's policies and procedures must, at a minimum, outline the bank's stress testing practices and methodologies, validation, use of stress test results, and processes for updating the bank's stress testing practices consistent with relevant supervisory guidance. The board of directors and senior management of each covered bank must approve and annually review the controls, oversight, and documentation, including policies and procedures, of the covered bank established in the proposed rule.

iv. *Stress Test Information and Results*

1. *Required Report to the FDIC of Stress Test Information and Results*

On or before January 5 of each year, each covered bank would be required to report to the Corporation, in the manner and form prescribed in the proposed rule, the results of the stress tests conducted by the bank during the immediately preceding year (''required report''). The Corporation plans to publish for comment a description of items to be included in the required report to the Corporation. It is anticipated that the required 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 bank'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, loan loss reserves, changes in capital levels and ratios, and changes in the bank's balance sheet over the planning horizon;
- Assumptions about potential capital distributions over the planning horizon; and
- Any other relevant qualitative information to facilitate supervisory assessment of the tests, upon request by the Corporation.

Quantitative information under each scenario:

- Estimated *pro forma* capital levels and capital ratios, including regulatory and any other capital ratios specified by the Corporation;
- Estimated losses by exposure category;
- Estimated pre-provision net revenue;

- Estimated changes in loan loss reserves;
- 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 primary supervisor of the covered bank.

The confidentiality of information submitted to the Corporation under the proposed rule shall be determined in accordance with applicable law including any available exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Rules and Regulations regarding the Disclosure of Information (12 CFR part 309).

The Corporation may also obtain supplemental information as needed.

Question: What are the anticipated costs on covered banks associated with internal data collection and developing methodologies for stress testing in line with requirements in the regulation?

2. *Supervisory Review of Covered Banks' Stress Test Processes and Results*

Based on information submitted by a covered bank in the required report to the Corporation, as well as other relevant information, the Corporation would conduct an analysis of the quality of the bank's stress test processes and related results. The Corporation envisions that feedback concerning such analysis would be provided to a covered bank through the supervisory process. In addition, each covered bank would be required to take the results of the annual stress test, in conjunction with the Corporation's analyses of those results, into account in making changes, as appropriate, to: the bank's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans of the covered bank for recovery and resolution; and to improve the overall risk management of the firm. The Corporation may also require other actions consistent with safety and soundness of the covered bank.

3. *Publication of Results*

Consistent with the requirements of the Dodd-Frank Act, the proposed rule would require each covered bank to publish a summary of the results of its annual stress tests within 90 days of the required date for submitting its stress test report to the Corporation. The summary may be published on a covered bank's Web site or any other forum that is reasonably accessible to the public. It is expected that a covered bank that is a subsidiary of a parent company also subject to section 165(i)(2) summary publication requirements could publish its summary on the parent company's Web site or in another forum with the parent company's summary. The required information publicly disclosed by each covered bank, as applicable, would, at a minimum, include:

(1) A description of the types of risks being included in the stress test;

(2) A general description of the methodologies employed to estimate losses, pre-provision net revenue, loss reserves, and changes in capital positions over the planning horizon; and

(3) Aggregate losses, pre-provision net revenue, loss reserves, net income, and *pro forma* capital levels and capital ratios (including regulatory and any other capital ratios specified by the Corporation) over the planning horizon, under each scenario.

Question: Is the proposed method of public disclosure appropriate and why? If not, what alternatives would be more appropriate? Do commenters have concerns with the content of public disclosures, including the details of qualitative and quantitative information?

II. Request for Comments

The Corporation requests comments on all aspects of the proposed rule for stress testing. What, if any, specific challenges exist with respect to the proposed steps and time frames? What specific alternatives exist to address these challenges that still allow the companies to meet their statutory requirements?

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 time frames? What specific alternatives exist to address these challenges that still allow the Corporation to meet its statutory requirements? Please comment on the use of the ''as of'' date of September 30, the January 5 reporting date, the publication date, and the sufficiency of time for completion of the stress test. Does the immediate effectiveness of the proposed rule provide sufficient time for a covered bank as of the effective date of the rule to conduct its first stress test?

III. Administrative Law Matters

A. Paperwork Reduction Act Analysis

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (''PRA''), the Corporation may not conduct or sponsor, and the 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 information collection requirements contained in this notice of proposed rulemaking have been submitted by the Corporation to OMB for review and approval under section 3506 of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320).

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, 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 collection 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.

You may submit written comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include RIN 3064–AD91 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change

to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to the U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to (202) 395–6974, Attention: Federal Banking Agency Desk Officer.

B. Proposed Information Collection

Title of Information Collection: Stress Test Reporting.

Frequency of Response: Annually.

Affected Public: State nonmember banks and state savings associations supervised by the Corporation.

Abstract: The information collection requirements are found in sections 325.204, 325.205, and 325.207 of the proposed rule. These requirements implement the stress testing and stress testing reporting requirements set forth in Section 165(i) of the Dodd-Frank Act. Section 325.204(a) identifies the calculations of the potential impact on capital that must be made during each quarter of the planning horizon. Section 325.204(c) requires that each covered bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures that describe the covered bank's stress test practices and methodologies, and processes for updating such bank's stress test practices. Section 325.205 sets forth the requirements for stress test reports to be filed annually with the Corporation and the Board in the time, manner and form specified by the Corporation. Section 325.205(d) includes a written request for institutions to request an extension of time to submit the stress test reports under certain situations that have been identified by the Corporation. Section 325.207 requires that a covered bank shall publish a summary of the results of its annual stress tests. The summary must include a description of the types of risks being included in the stress test, a general description of the methodologies employed to estimate losses, pre-provision net revenue, loss reserves, and changes in capital positions over the planning horizon and aggregate losses, pre-provision net revenue, loss reserves, net income, and *pro forma* capital levels and capital ratios (including regulatory and any other capital ratios specified by the Corporation) over the planning horizon, under each scenario.

	Number of respondents	Annual frequency	Hourly estimate	Total hours
Initial Paperwork Burden:				
Initial Report	23	1	2,000	46,000
Total	23	1	2,000	46,000
Ongoing Paperwork Burden:				
Annual Report	23	1	1,040	23,920
Total	23	1	1,040	23,920

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (''RFA''), requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.[2] The proposed rule would apply only to state nonmember banks and state savings associations with more than $10 billion in total consolidated assets. Under regulations issued by the Small Business Administration (''SBA''), a bank or other depository institution is considered ''small'' if it has $175 million or less in assets.[3] As of December 31, 2010, there are approximately 2,685 small state nonmember banks and state savings associations. Since the proposed rule would apply only to state nonmember banks and state savings associations with more than $10 billion in total consolidated assets, the Corporation does not expect that the proposed rule will directly affect a substantial number of small entities. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities and therefore, a regulatory flexibility analysis under the RFA is not required.

C. Solicitation of Comments and 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 federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Corporation has sought to present the proposed rule in a simple and straightforward manner and invites comment on how to make the proposed rule easier to understand. For example:

- Is the material organized to suit your needs? If not, how could the rule be more clearly presented?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Corporation incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 325

Administrative practice and procedure, Banks, Banking, Federal Deposit Insurance Corporation, Reporting and recordkeeping requirements, State savings associations, Stress tests.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

The Corporation proposes to amend part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i),

[2] See 5 U.S.C. 603, 604, and 605.

[3] 13 CFR 121.201.

1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); 12 U.S.C. 5365(i).

2. Add subpart C to part 325 to read as follows:

Subpart C—Annual Stress Test

Sec.

Subpart C—Annual Stress Test

§ 325.201 Authority, purpose, applicability, and reservation of authority.

(a) *Authority.* This subpart is issued by the Federal Deposit Insurance Corporation (the ''Corporation'' or ''FDIC'') under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') (Pub. L. 111–203, 124 Stat. 1376, 1430–1431, 12 U.S.C. 5365(i)(2)).

(b) *Purpose.* This subpart implements section 165(i)(2) of the Dodd Frank Act (12 U.S.C. 5365(i)(2)), which requires the Corporation (in coordination with the Board of Governors of the Federal Reserve System (''Board'') and the Federal Insurance Office) to issue regulations implementing the requirement that each covered bank supervised by the Corporation with total consolidated assets of more than $10 billion conduct annual stress tests.

(c) *Applicability.* (1) Except as otherwise provided in this subpart, a bank that becomes a covered bank no less than 90 days before September 30 of that calendar year is subject to the requirements of this subpart.

(2) *Initial applicability.* A bank that is a covered bank on the effective date of this subpart is subject to the requirements, including timing of required submissions to the Corporation, of this subpart.

(d) *Reservation of authority.* (1) Notwithstanding any other provisions of this subpart, the Corporation may accelerate or extend any deadline for stress testing, reporting or publication, or require additional tests if the Corporation determines that such modification is appropriate in light of the covered bank's activities, operations, risk profile, or regulatory capital.

(2) If the Corporation determines that the stress testing techniques and methodologies of a covered bank are deficient under § 325.204, the Corporation may determine that additional analytical techniques and methodologies are appropriate for the covered bank to use in identifying, measuring, and monitoring risks to its safety and soundness and require it to implement such techniques and methodologies.

(3) The Corporation reserves the authority to require a covered bank to make additional publications beyond those required by this subpart if the Corporation determines that such covered bank's publication does not adequately address one or more material elements of the stress test. Further, nothing in this subpart limits the authority of the Corporation 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.

§ 325.202 Definitions.

For purposes of this subpart—

(a) *Covered bank* means

(1) Any state nonmember bank or state savings association that has more than $10 billion in total consolidated assets, as determined based on the average of total consolidated assets as reported on the state nonmember bank's four most recently-filed Consolidated Reports of Condition and Income (Call Report), or on the state savings association's four most recently-filed Thrift Financial Reports (TFRs).

(2) Any state nonmember bank or state savings association that meets the requirements of paragraph (1) shall remain a covered bank for purposes of this subpart unless and until the state nonmember bank has $10 billion or less in total consolidated assets as determined based on its four most recently-filed Call Reports, or the state savings association has $10 billion or less in total consolidated assets as determined based on each of its four most recently-filed TFRs.

(b) *Planning horizon* means the period over which the bank's stress test projections will extend: specifically nine quarters.

(c) *Scenarios* are sets of economic and financial conditions used in the covered banks' stress tests, including baseline, adverse, and severely adverse.

(d) *State nonmember bank* and *state savings association* shall each have the same respective meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(e) *Stress test* is a process used to assess the potential impact on a covered bank of economic and financial conditions (scenarios) on the consolidated earnings, losses, and capital of a covered bank over a set planning horizon, taking into account the current condition of the covered bank and the covered bank's risks, exposures, strategies, and activities.

§ 325.203 Annual stress tests required.

(a)(1) Each covered bank shall complete an annual stress test of itself based on data of the covered bank as of September 30 of that calendar year.

(2) The stress test shall be conducted in accordance with this section and the methodologies and practices described in section 325.204.

(b) *Scenarios provided by the Corporation.* In conducting its stress tests under this section, each covered bank must use scenarios provided by the Corporation 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 Corporation will provide to all covered banks a description of the baseline, adverse, and severely adverse scenarios that each covered bank shall use to conduct its annual stress tests under this subpart.

§ 325.204 Methodologies and practices.

(a) *Potential impact on capital.*

(1) In conducting a stress test under § 325.203, each covered bank 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, loan loss reserves, and *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 Corporation.

(b) *Planning horizon.* Each covered bank must use a planning horizon of at least nine quarters over which the impact of specified scenarios would be assessed.

(c) *Controls and oversight of stress testing processes.*

(1) Each covered bank 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 bank are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered bank's stress

testing practices and methodologies, validation, and use of stress testing results, as well as processes for updating the covered bank's stress testing practices consistent with relevant supervisory guidance.

(2) The board of directors and senior management of each covered bank shall approve and annually review the controls, oversight, and documentation, including policies and procedures of the covered bank pursuant to this subpart.

§ 325.205 Report to the FDIC of stress test results and related information.

(a) *Report required for stress tests.* On or before January 5 of each year, each covered bank must report the results of the stress test required under section 325.203 to the FDIC in accordance with paragraph 325.205(b) .

(b) *Content of report for annual stress tests.* Each covered bank must file a report in the manner, in such form, and containing the information established by the Corporation.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Corporation under this subpart and related materials shall be determined in accordance with applicable law including any available exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Rules and Regulations regarding the Disclosure of Information (12 CFR Part 309).

(d) *Extension.* The Corporation may, in its discretion, and upon request by a covered bank, extend the time period for compliance established under paragraph 325.205(a) for up to an additional 60 days.

§ 325.206 Supervisory review of stress tests and post-assessment actions.

(a) Each covered bank shall take the results of the stress tests conducted under section 325.203 into account in making changes, as appropriate, to: The covered bank'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.

§ 325.207 Publication of summary of results.

(a) *Public disclosure of results required for stress tests of covered banks.* Within 90 days of the date required for submitting a report under § 325.205(a) for its required stress test under § 325.203, a covered bank shall publicly disclose a summary of the results of the stress tests required under § 325.203.

(b) *Information to be disclosed in the summary.* The information disclosed by each covered bank shall, at a minimum, include—

(1) A description of the types of risks being included in the stress test;

(2) A general description of the methodologies employed to estimate losses, pre-provision net revenue, loss reserves, and changes in capital positions over the planning horizon;

(3) Aggregate losses, pre-provision net revenue, loss reserves, net income, and *pro forma* capital levels and capital ratios (including regulatory and any other capital ratios specified by the Corporation) over the planning horizon under each scenario.

Dated at Washington, DC this 17th day of January, 2012.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–1135 Filed 1–20–12; 8:45 am]

BILLING CODE 6714–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 619, 620 and 630

RIN 3052–AC41

Compensation, Retirement Programs, and Related Benefits

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, us, we, or our) proposes to amend our regulations related to Farm Credit System (System) bank and association disclosures to shareholders and investors. The proposed rule would require reporting of supplemental retirement plans, a discussion of the link between senior officer compensation and performance, and timely and transparent reporting to shareholders of significant events that occur between annual reporting periods. We believe the proposed changes will provide full, transparent and consistent disclosures to shareholders. The proposed rule would identify the minimum responsibilities a compensation committee must perform to ensure it continues to exercise good stewardship, and require that System banks and associations provide for a nonbinding, advisory vote on senior officer compensation in order to engage shareholders in the management and control of their institution. Also, the proposed rule would bifurcate existing annual reporting requirements at § 620.5 and make other conforming technical changes.

DATES: Submit comments on or before March 23, 2012.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (faxes) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we no longer accept comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send an email to *reg-comm@fca.gov*.
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Deborah Wilson, Senior Accountant, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or

Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objectives of this proposed rule are to:

- Improve the transparency and completeness of disclosures in System

institution annual reports or annual meeting information statements (collectively, Report) by requiring disclosure of all components of senior officer [1] compensation and retirement benefits;

- Promote the continued safety and soundness of System institutions by requiring certain oversight responsibilities of compensation committees;
- Strengthen timely communication with System shareholders on significant events that occur between annual reporting periods;
- Provide shareholders with a clear and complete understanding of their institution's obligations and commitments related to supplemental retirement benefit plans (SRP) for employees other than the senior officer group; and
- Encourage member participation in the control and management of their institution by providing voting shareholders an opportunity to cast a nonbinding, advisory vote on senior officer compensation.

II. Background

The Farm Credit Act of 1971, as amended (Act),[2] authorizes the FCA to issue regulations implementing the Act's provisions.[3] Our regulations are intended to ensure the safe and sound operations of System institutions and to govern the disclosure of financial information to shareholders of, and investors in, the System. Congress explained in section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act) [4] that disclosures of financial information and compensation paid to senior officers, among other disclosures, provide System shareholders with information necessary to better manage their institution and make informed decisions regarding the operation of their institution.

Section 1.1(b) of the Act sets forth the objective to continue to encourage owners-borrowers to participate in the management, control, and ownership of their cooperative. In an October 14, 2010, Resolution of the Farm Credit Administration Board, we declared our commitment to support the cooperative business model and structure of System banks and associations.[5] The FCA emphasizes the cooperative structure and principles by advancing regulatory proposals that encourage borrowers to participate in the management, control and ownership of their institution.

A. Comments Received

On November 18, 2010, we issued an advance notice of proposed rulemaking (ANPRM) on disclosure of senior officer compensation and related topics in order to gather information for the development of a proposed rulemaking.[6] We received 99 comment letters in response to the ANPRM from individuals and entities associated with the System, including the Farm Credit Council (FCC), acting for its membership, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). We reviewed all comment letters and evaluated their recommendations in recognition of existing law and policy considerations and the cooperative nature of the System. We are proposing rules and amendments related to senior officer compensation disclosures and related topics that were discussed in the ANPRM. Other topics in the ANPRM not included in this rulemaking may be considered in future rulemakings.[7]

We are actively reviewing the authority of the Funding Corporation's System Audit Committee (SAC) to have ''unfettered ability to engage outside advisors.'' Section 630.6 authorizes the Funding Corporation board to deny, by a two-thirds majority vote of the full board, any SAC request for resources. The SAC requested we consider amending our regulations to remove this authority. We addressed this issue in the ANPRM and most commenters responded that it would be imprudent to provide absolute discretion on the use of resources to any bank or association board committee. The FCC expressed the view of its membership that existing FCA regulations appropriately balance audit committee need with the board's ultimate responsibility to the customer-shareholder for the safety and financial stability of the institution. However, the FCC also noted that its membership supported the Funding Corporation's request. The SAC's response to the ANPRM was that the SAC believed it must have every resource it requires at its disposal to effectively perform its function. We are not proposing changes to this authority in this rulemaking, but may revisit the matter in future rulemakings.

B. Proposed Rule

We periodically review and update our disclosure regulations to ensure they are appropriate for current business practices, provide shareholders with necessary information, and provide investors with information necessary to assist them in making investment decisions. In keeping with today's changing economic and business environments, and in accordance with the findings of Congress under the 1992 Act and the FCA Board Resolution of October 14, 2010, we believe it is appropriate to review and update our rules on senior officer compensation disclosures and other related topics. We believe that banks and associations can continue to support the cooperative business model, fulfill the System's public policy mission in a safe and sound manner, and best serve their members by providing shareholders:

- Complete disclosure that allows them to understand senior officer compensation and retirement policies and practices and all compensation and retirement benefit obligations;
- Timely and transparent communication on significant or material events affecting their institution; and
- A nonbinding, advisory vote on senior officer compensation.

We believe the proposed rule continues to balance meaningful disclosures, committee oversight, and shareholder rights with institution safety and soundness.

III. Section-by-Section Analysis

A. Bifurcation of Annual Reporting Requirements Sections [Existing § 620.5(h) Through (k); New § 620.6]

To enhance the clarity and organization of our rules, we propose moving the disclosure requirements for directors and senior officers in § 620.5(h) through (k) to new § 620.6. Also, we propose that § 620.5(h) contain a reference to § 620.6, stating that the presentation of the § 620.6 disclosures would continue to be required in the annual report. We propose no changes to the current requirements of existing § 620.5(h), (j), and (k), except for minor rewording of the language and cross citations to recognize the proposed new locations at § 620.6(a), (b), (d), (e), and (f). However, in the process of moving § 620.5(h) through (k) to new § 620.6, some regulatory language is proposed to be changed in existing § 620.5(i) to remove redundancy and enhance clarity. Specifically, we propose

[1] All references to senior officer(s) in this proposed rule refer to a senior officer as defined in 12 CFR 619.9310.

[2] Public Law 92–181, 85 Stat. 583 (1971), 12 U.S.C. 2001, *et seq.*

[3] 12 U.S.C. 2252(a)(8), (9) and (10).

[4] Public Law 102–552, 106 Stat. 4131 (1992).

[5] Copies of the resolution may be obtained by contacting the FCA.

[6] 75 FR 70619 (Nov. 18, 2010).

[7] These topics include the use of a compensation consultant by an institution's compensation committee and director of severance benefits and related payments.

clarifying how highly compensated employees, who are not senior officers, are treated in the Summary Compensation Table (Compensation Table) at new § 620.6(c)(2)(i).

Also, we propose clarifying where to disclose the required statement that the information on compensation for any individual senior officer, as disclosed in the Compensation Table, is available to shareholders upon request. In new § 620.6(c)(2)(ii), we propose that the statement must be presented directly beneath the Compensation Table because we believe the notice of this right should be in close proximity to the related disclosure. We propose new disclosure requirements that would be contained in new § 620.6(c) and are discussed in Part III.B. of the preamble to this proposed rule.

As conforming technical changes, we propose changing references to the annual report's director and senior officer compensation and conflicts of interest disclosures, made in other areas of our rules, to their location in new § 620.6. Specifically changing references contained in § 611.330(b) of our rules from § 620.5(j) and (k) to § 620.6(e) and (f); changing references contained in § 612.2145(a)(2) of our rules from § 620.5(k) to § 620.6(f); changing references contained in § 612.2155(a)(2) of our rules from § 620.5(k) to § 620.6(f); adding § 620.6 to the references contained in §§ 612.2165(b)(12) and 620.4(c); renumbering existing § 620.5(l) through (n) as (i) through (k); and changing references in § 620.21(a)(3)(i) of our rules from § 620.5(j) (''Transactions with senior officers and directors'') to § 620.6(e) and § 620.5(k) (''Involvement in certain legal proceedings'') to § 620.6(f).

B. Enhanced Disclosures of Senior Officer Compensation [§ 620.5(i) and New § 620.6(c)]

Existing § 620.5(i) requires that compensation paid to or earned by senior officers be disclosed in the Compensation Table, and include discussion of benefits paid in connection with resignation, retirement, or termination.

In developing this proposed rule, we recognized that:

- Compensation and retirement benefit practices at many System institutions are increasingly more complex and diverse;
- Our current disclosure requirements may not capture all current practices; and
- Disclosures should include a clear discussion of the relationship between the risks and rewards of compensation practices.

Consequently, we believe our disclosure rules should be amended to ensure that all such practices are addressed in an institution's disclosure of senior officer compensation.

In new § 620.6(c)(4), we propose requiring that institutions disclose information related to supplemental executive retirement plans (SERP), if provided to chief executive officers (CEOs), senior officers or other highly compensated employees (collectively, senior officers). If the CEO and senior officers participate solely in pension and retirement plans offered to all employees, the disclosures would not be required. The information to be disclosed would include, at a minimum:

- Funded and unfunded present value of accumulated benefits for all CEO and senior officers' pension and retirement benefit plans, including the SERP.
- Years of credited service for the CEO and for the senior officers.
- Vested and unvested dollar amounts.

We propose that the disclosures be included in a separate pension and retirement benefits table, and that it be presented in the report with the Compensation Table.

In addition to requiring disclosure of SERPs, we propose institutions:

- Include all compensation, benefit and retirement plans when discussing compensation programs;
- Describe the overall risk and reward structure of compensation, benefit and retirements plans; and
- Discuss the link between the CEO's and senior officers' total compensation, as reported, and both the institution's overall performance and the CEO's and senior officers' performance.

In making these disclosures, we would expect an institution to discuss the criteria used in determining its overall performance (*e.g.,* capital and risk management, credit risk and risk exposure to earnings, liquidity management, and compliance with the general financing agreement). Also, we would expect institutions to discuss the benchmarks or other factors used to determine compensation, including incentive-based compensation. Disclosures would be specific to the institution, rather than being general or boilerplate.

We further propose at new § 620.6(c)(3)(ii)(B) that institutions disclose in the Compensation Table the dollar amount of tax reimbursements or tax payments provided by the institution to senior officers. The disclosure would be classified as a perquisite and other personal benefit and would be reported in the period in which payment is made. We are not proposing to change the threshold for perquisite disclosures.

We believe improved transparency and consistency in disclosures of senior officer compensation provides meaningful and complete disclosure to members-owners and investors. Enhanced disclosures assist members-owners and investors in making informed decisions regarding the financial condition and operations of the institution.

We also propose adding a new § 619.9335 to our general definition rules to define SRP and SERP. A SRP or SERP would be defined to mean a nonqualified retirement plan that provides benefits above and beyond those covered by other retirement plans for all employees, and that is funded in whole or in part by the institution.

C. Compensation Committee Responsibilities [§§ 620.31 and 630.6(b)]

Our existing rules at §§ 620.31 and 630.6(b) require a compensation committee to review and approve the overall compensation programs for senior officers and to review the compensation policies and plans for all employees. Our July 9, 2009, FCA Bookletter, ''Compensation Committees'' (BL–060), provides guidance on how compensation committees should fulfill their duties. However, we believe it is appropriate to enhance our regulations to include the minimum responsibilities a compensation committee must perform in order to carry out its duties.

Therefore, in order that a compensation committee continues to effectively fulfill its stewardship role, maintain effective and active oversight, and ensure compensation and retirement benefit practices do not jeopardize the institution's safety and soundness, we propose clarifying that the compensation committee is accountable for:

- Monitoring the terms and provisions of the incentive-based compensation programs for senior officers,
- Analyzing the institution's projected long-term obligations for compensation and retirement benefits, and
- Balancing financial rewards to senior officers against the risks to the institution.

The proposed rule would amend our regulations at §§ 620.31(b) and 630.6(b)(2) to enhance compensation committee responsibilities to emphasize that the committee must ensure that:

• CEO and senior officers' compensation promotes the continued safety and soundness of the institution and supports the institution's long-term business strategy and goals,

• Risks to the institution and the financial rewards to the CEO and senior officers are balanced (*e.g.,* compensation and benefits are not excessive relative to the results of operations and financial condition of the institution),

• The institution's projected total long-term compensation and retirement obligations for the CEO and senior officers are analyzed, and

• The compensation of employee groups, other than the CEO and senior officers, do not pose an imprudent risk to the institution (*e.g.,* loan officers).

In addition, we emphasize that compensation committees should ensure that incentive-based compensation programs:

• Are not unreasonable or disproportionate to the services performed, and

• Are structured so that the payout schedule considers the potential for future losses or risks to the institution from services performed in the current period.

Under the proposed rule, the compensation committee would be required to document in meeting minutes its actions related to the proposed enhanced responsibilities. Documenting its actions would facilitate board review of how the committee carried out its responsibilities and provide the current committee with an understanding of prior committee actions.

For organizational reasons, we propose moving the requirements that all compensation committee members must be members of the board of directors and that the compensation committee report only to the board. The requirements would be moved to the section that discusses the formation of a compensation committee. Also, we propose replacing ''function'' with ''perform its duties'' in §§ 620.31(c) and 630.6(b)(3) for clarification.

D. Notice to Shareholders [§§ 620.10, 620.11, and 620.15]

In FCA Board Policy Statement, ''Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions,'' [8] (FCA–PS–80) the FCA reaffirmed its commitment to the cooperative structure and its values and practices, including regular and relevant communication with members. As such, we believe that certain events may be of such significance or materiality to warrant communication to members-owners throughout the institution's operating cycle. We believe that timely and transparent communication to members encourages their continued participation in the ownership, control and management of their institution.

Existing §§ 620.15 and 620.17 require that System institutions provide notice to shareholders when the institution is not in compliance with minimum permanent capital standards. This notice is a supplement to annual and quarterly reporting requirements.

In a similar manner, we propose adding a requirement in § 620.15 that significant events or circumstances occurring in interim or intervening periods be communicated to shareholders through separate notice. As proposed, notices would be made as soon as possible, but not later than 90 calendar days after occurrence. As an alternative, we propose allowing the institution to issue the notice within its quarterly report, with prominent disclosure at the front of the report.

The proposed rule would allow institutions to distribute the notice via electronic distribution (Web site) or by publication with circulation wide enough to be reasonably assured that all shareholders have timely access to the information. Also, we propose that the notice be provided to the FCA at the same time it is distributed to shareholders and that the notice be dated and signed.

The proposed rule would include a list of events that must, at a minimum, be reported. If the event would be a ''significant'' change to a compensation, retirement, benefit or capitalization plan, significance would be based on the change to the individual plan and not the impact of the change to the institution as a whole.

As a related change to our rules, we propose consolidating the current contents of §§ 620.15 and 620.17 on notices regarding permanent capital into § 620.17. This change would allow the placement of the above proposed notice of significant or material events to be located in § 620.15 while preserving existing requirements on notices for permanent capital. We believe the proposed consolidation would add clarity to our rules by keeping like subject matters together and removing redundant language. It is not intended that the meaning and requirements for permanent capital notices be changed.

To conform our regulations in § 620.10, ''Preparing the quarterly report,'' with the proposed notice of significant or material events, we propose adding a new paragraph (c) to existing § 620.10. The proposed addition would clarify that the quarterly report may be used for notices to shareholders, except minimum permanent capital notices. We also propose adding a similar provision to § 620.11 on contents of quarterly reports, but including a proposed requirement that notices included in the quarterly report be located at the front of the report. We believe this proposed requirement preserves the objective of the notices, which is that members-owners receive timely and transparent communication of significant and material events.

E. Disclosure of Supplemental Retirement Plans to Employees, Exclusive of the CEO and Senior Officers [§ 620.5(e)]

We propose adding a new paragraph (4) to existing § 620.5(e) that would require disclosure of the institution's obligations related to a SRP to employees, exclusive of any plan provided to the CEO and senior officers. The disclosure would include, at a minimum:

• A description of the plan;

• Funded and unfunded obligations of the plan; and

• Vested and unvested dollar amounts.

We believe that by disclosing an institution's current and future supplemental benefit obligations, shareholders and investors will have a more complete understanding of the related liabilities and commitments, both on- and off-balance sheet.

F. Nonbinding, Advisory Vote by Shareholders on Senior Officer Compensation [§§ 611.100, 620.5(a), and 630.20(i); New §§ 611.360, 611.410, and 620.6(c)(6)]

Our existing regulations do not require a nonbinding, advisory vote by an institution's shareholders on senior officer compensation. However, in FCA Informational Memorandum, ''Serving the Members of Farm Credit System Institutions'' (IM), dated November 4, 2010, we noted that boards of directors can encourage member participation in the management and control of the institution by engaging members as owners and communicating with members. The IM highlighted our belief that effective boards use information obtained from members to establish strategic direction for their institutions and to ensure business activities remain member-focused.

We continue to believe that a Government-sponsored enterprise comprised of cooperative institutions should continually strive to operate under high standards in order to achieve

[8] *See* 75 FR 64728, Oct. 20, 2010.

the System's public policy mission and encourage member-owner participation in their institution. Therefore, we propose adding a new § 611.410 requiring that Farm Credit banks and associations provide shareholders the opportunity to cast a nonbinding, advisory vote on senior officer compensation.

The proposed § 611.410 advisory vote would be required at banks and associations if either the CEO's or the aggregate of all senior officers' compensation, as disclosed in the Compensation Table, increased or decreased by 15 percent or more from the previous reporting period. The vote would not be required if the 15-percent change resulted solely from a change in the CEO or a change in the composition of personnel included in the senior officer group. Also, we propose that associations be required to hold a nonbinding, advisory vote on compensation if 5 percent of their voting shareholders petition for it. We did not propose this additional petition requirement for banks because there are fewer shareholders at the bank level, thereby allowing a few shareholders to control the petition process.

We do not believe the vote would be burdensome to institutions since it would be required only when a 15-percent change in practice has occurred or, for associations, when 5 percent of their voting shareholders petition for the vote. We believe the proposed nonbinding, advisory vote would provide a means for shareholders to clearly express and communicate either their approval or disapproval of compensation practices for senior officers to their institution's board. The board could then use the information, as appropriate, when establishing the institution's strategic direction and ensure that it remains member-focused.

We selected 15 percent as a threshold change in compensation based on the recent range of percentage changes to bank and association CEO's and senior officers' compensation. We consider the 15-percent threshold to be reasonable. We selected 5 percent as the maximum percentage of voting shareholders required to petition their association for the vote because 5 percent is generally accepted as a criteria for assessing significance or materiality.

We are also proposing general procedures for advisory votes in new § 611.360. The proposed procedures would apply to all advisory votes held by an institution including, but not limited to, the proposed advisory vote on compensation. As proposed, advisory votes would be subject to the same confidentiality and security in voting requirements of § 611.340 and would be cast on a one-member, one-vote basis, including votes cast by shareholders of Farm Credit banks. We propose that weighted and cumulative voting not be allowed in advisory votes in order to further the objective of giving equal voice to each shareholder. Also, new § 611.360 would require that institutions develop voting procedures and provide notice to shareholders of any advisory vote and the procedures used in casting the vote. In addition, proposed § 611.360 would permit the advisory votes to be made in-person, by proxy, and by mail.

We propose disclosure in the annual report when an advisory vote is held, including disclosure of the results of the vote. We propose adding a new § 620.5(a)(11) to the ''Description of business'' section of the annual report, requiring a discussion of the types of advisory votes held during the reporting period. We further propose that disclosure of nonbinding, advisory votes on senior officer compensation be included with senior officer compensation disclosures in new § 620.6(c)(6). This disclosure requirement is proposed to be carried forward into the System-wide report to investors at § 630.20(i).

We propose in new § 611.410(c)(6) that associations disclose that shareholders may petition for an advisory vote, disclose when a petition is received and disclose the results of the petition. The proposal would require that the disclosures be presented with the Compensation Table. We believe that providing the disclosures with the Compensation Table ensures that shareholders are aware of their right to express their opinion on senior officer compensation practices of their associations.

In addition, we propose adding a definition of ''advisory vote'' at § 611.100(a) to ensure a consistent meaning of the term.

G. Miscellaneous

1. Technical Changes [§§ 611.330(c), 611.400, 620.2(c), 620.4(c), and 620.11]

Our proposed amendments require additional conforming and clarifying changes to other regulatory provisions. Likewise, in the proposed process of consolidating provisions, some regulatory language is proposed to be changed to remove redundancy and enhance clarity. We propose making the following technical and conforming changes:

a. We propose adding a definition for ''business day'' to § 611.100 to clarify our longstanding position that when our rules reference business day it means a day the institution is open for business, but excludes Federal holidays. As a technical change, we propose renumbering existing § 611.100 paragraphs (a) through (f) as (c) through (h).

b. In subpart D of part 611, we propose revising the name of the subpart from ''Rules for Compensation of Board Members'' to ''Compensation Practices of Farm Credit Banks and Associations.'' The change will clarify that the provisions of subpart D relate to various compensation issues at the bank and association level and not just to bank board members. As a conforming change, in § 611.400, we propose revising the name of the section from ''Compensation of bank board members'' to ''Compensation of Farm Credit bank board members'' to align terminology to that used in our general definitions of part 619. We also propose replacing the phrase ''Farm Credit System bank'' with ''Farm Credit bank'' everywhere it appears to update the section for the same reason.

c. We propose updating the language in § 611.400(b) regarding annual inflationary changes in the statutory salary limit for Farm Credit bank directors. The proposed change would continue to require that we communicate the annual changes to the System, but remove the requirement that we use a bookletter to do so. This will expedite communication of the information.

d. We propose clarifying that the director-nominee disclosures discussed in § 611.330(c)(1) relate to the annual meeting information statement by providing a corresponding rule citation to § 620.21(b).

e. We propose changing the language in § 620.2(c) regarding the electronic delivery of reports to shareholders to clarify that the provision applies only to those reports individually sent to shareholders, not all reports.

f. We propose a minor grammatical change to § 620.4(c) on contents of the annual report by breaking out the sentence into two sentences. No change to the meaning of the paragraph is intended.

g. We propose to reorganize and renumber the existing provisions of § 620.11 to enhance clarity. No changes to the meaning of existing language is proposed, although we propose adding an additional provision to this section on incorporating shareholder notices into a quarterly report, as discussed earlier.

2. Incorporating by Reference [§ 620.2(d)]

We propose changing the language in § 620.2(d), which allows System institutions to incorporate by reference in their reports. The proposed change is to specify that information disclosed in any part of the report may be incorporated by reference in that report unless instructions state otherwise. In a prior rulemaking, we explained that § 620.2(d) allowed institutions to provide information required to be in a specific section of the annual report through a reference to another section of the report.[9] The proposed limit on incorporating by reference would only exist when a rule limits the location of a specific disclosure.

3. Signatures on Reports [§ 620.10(c)]

In developing this proposed rule on disclosures in annual and quarterly reports, we noticed an inadvertent omission in the preparation requirements of quarterly reports. While quarterly reports are not required to be mailed to shareholders, we have always expected them to contain signatures and certifications used for other reports. However, existing § 620.10(a) does not clearly state this requirement. Therefore, we propose adding a new paragraph (a)(3) requiring quarterly reports to be signed and financial statements contained in the report to be certified as complete and accurate.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, Banking, Conflict of interests, Crime, Investigations, Rural areas.

12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, Banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 612, 619, 620, and 630 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

Subpart A—General

2. Section 611.100 is amended by:

a. Redesignating existing paragraphs (a) through (f) as paragraphs (c) through (h), respectively; and

b. Adding new paragraphs (a) and (b) to read as follows:

§ 611.100 Definitions.

* * * * *

(a) *Advisory vote* means a nonbinding vote by the voting stockholders on certain events of the institution, including compensation practices.

(b) *Business day* means a day the institution is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

* * * * *

Subpart C—Election of Directors and Other Voting Procedures

§ 611.330 [Amended]

3. Section 611.330 is amended by:

a. Removing the reference ''§ 620.5(j) and (k)'' and adding in its place, the reference, ''§ 620.6(e) and (f)'' in the first sentence of paragraphs (b)(1) and (b)(2); and

b. Adding the words ''in accordance with § 620.21(b)'' to the end of paragraph (c)(1).

4. Subpart C is amended by adding a new § 611.360 to read as follows:

§ 611.360 Stockholder advisory votes.

(a) Each Farm Credit bank and association must establish and maintain written procedures to implement advisory votes. The procedures, at a minimum, must:

(1) Identify the subject of the advisory vote.

(2) Establish the timing, manner, and notice of the vote.

(i) If the vote will be held in connection with a stockholder meeting or director election, notice of the advisory vote must be part of the Annual Meeting Information Statement, pursuant to § 620.21(d).

(ii) The vote may be in-person, by proxy, or by mail, or any combination thereof.

(3) For associations, explain the process for petitioning for an advisory vote.

(b) Advisory votes are subject to the requirements of § 611.340 and the confidential voting provisions of section 4.20 of the Act (12 U.S.C. 2208).

(c) Advisory votes must be cast using a ''one-member, one-vote'' voting scheme and are not subject to the provisions in § 615.5230 allowing weighted, cumulative, and other voting schemes.

Subpart D—Compensation Practices of Farm Credit Banks and Associations

5. Revise the heading of subpart D to read as set forth above.

§ 611.400 [Amended]

6. Section 611.400 is amended by:

a. Removing the words ''Farm Credit System bank'' and adding in their place ''Farm Credit bank'' in paragraphs (a) and (d)(1); and

b. Removing the words ''distribute a bookletter to all FCS banks that communicates'' and adding in their place the word ''communicate'' in the last sentence of paragraph (b).

7. Subpart D is amended by adding a new § 611.410 to read as follows:

§ 611.410 Compensation of senior officers.

(a) If compensation for the chief executive officer either increases or decreases 15 percent or more from the previous reporting period, then the bank or association must present the compensation to voting stockholders for an advisory vote. Such advisory vote must be held in accordance with the provisions of § 611.360. Advisory votes on compensation resulting solely from a change in the chief executive officer during the reporting period are not required.

[9] *See* 74 FR 28597, June 17, 2009.

(b) If senior officer compensation, as reported in the aggregate, either increases or decreases 15 percent or more from the previous reporting period, then the bank or association must present the compensation to voting stockholders for an advisory vote. Such advisory vote must be held in accordance with the provisions of § 611.360. Advisory votes on compensation resulting solely from a change in senior officers included in the aggregate during the reporting period are not required.

(c) Each association must hold an advisory vote on compensation paid to chief executive officers, or senior officers in the aggregate, in accordance with the provisions of § 611.360 when 5 percent of the association's voting stockholders petition for an advisory vote.

(d) Each association must disclose in its annual report to shareholders the authority to petition for an advisory vote on senior officer compensation. The disclosure must also state if a petition was submitted during the reporting period, disclosing if it was certified and a vote held and, if applicable, the results of the vote.

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

8. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

Subpart A—Standards of Conduct

§ 612.2145 [Amended]

9. Section 612.2145 is amended by removing the reference ''§ 620.5(k)'' and adding in its place, the reference ''§ 620.6 (f)'' in paragraph (a)(2).

§ 612.2155 [Amended]

10. Section 612.2155 is amended by removing the reference ''§ 620.5 (k)'' and adding in its place, the reference ''§ 620.6 (f)'' in paragraph (a)(2).

§ 612.2165 [Amended]

11. Section 612.2165 is amended by removing the reference ''§ 620.5'' and adding in its place ''§§ 620.5 and 620.6'' in paragraph (b)(12).

PART 619—DEFINITIONS

12. The authority citation for part 619 is revised to read as follows:

Authority: Secs. 1.4, 1.5, 1.7, 2.1, 2.2, 2.4, 2.11, 2.12, 3.1, 3.2, 3.21, 4.9, 5.9, 5.17, 5.19, 7.0, 7.1, 7.6, 7.8 and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2013, 2015, 2072, 2073, 2075, 2092, 2093, 2122, 2123, 2142, 2160, 2243, 2252, 2254, 2279a, 2279a–1, 2279b, 2279c–1, 2279f); sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

13. Part 619 is amended by adding a new § 619.9335 to read as follows:

§ 619.9335 Supplemental retirement plan or supplemental executive retirement plan.

A nonqualified retirement plan that provides benefits in addition to those covered by other retirement plans for all employees and funded in whole or part by a Farm Credit bank or association.

PART 620—DISCLOSURE TO SHAREHOLDERS

14. The authority citation for part 620 is revised to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—General

15. Section 620.2 is amended by revising paragraphs (c) and (d) to read as follows:

§ 620.2 Preparing and filing reports.

* * * * *

(c) The reports sent to shareholders must comply with the requirements of § 620.3 of this part and shareholders must agree to electronic delivery of those reports.

(d) Information in any part of a report may be incorporated by reference in answer or partial answer to any other item of the report, unless instructions for the report state otherwise.

* * * * *

Subpart B—Annual Report to Shareholders

16. Section 620.4 is amended by revising paragraph (c) to read as follows:

§ 620.4 Preparing and providing the annual report.

* * * * *

(c) The report must contain, at a minimum, the information required by §§ 620.5 and 620.6. In addition, the report must contain such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

17. Section 620.5 is amended by:

a. Adding new paragraphs (a)(11) and (e)(4);

b. Revising paragraph (h);

c. Removing paragraphs (i), (j), and (k); and

d. Redesignating existing paragraphs (l), (m), and (n) as paragraphs (i), (j), and (k), respectively, to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(a) *Description of business.*

* * * * *

(11) The types of advisory votes held during the reporting period and the results of the vote(s).

* * * * *

(e) *Description of liabilities.*

* * * * *

(4) Describe any supplemental retirement plans funded by the institution on behalf of employees whose benefits are not included in the Pension Benefits Table in § 620.6(c) of this part. Disclose the present value of the aggregate accumulated benefits of funded, unfunded, and unvested obligations related to the plan(s).

* * * * *

(h) *Directors and senior officers.* In a separate section of the annual report, make the disclosures required in § 620.6 of this part.

* * * * *

18. Subpart B is amended by adding a new § 620.6 to read as follows:

§ 620.6 Disclosures in the annual report to shareholders relating to directors and senior officers.

(a) *General.*

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each director, and the position, title, and date each senior officer commenced employment in his or her current position.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director and senior officer, list any other business interest where the director or senior officer serves on the board of directors or as a senior officer. Name the position held and state the principal business in which the business is engaged.

(b) *Compensation of directors.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and noncash compensation). Noncash compensation with an annual aggregate value of less than $5,000 does not have to be reported. State the total cash and reportable noncash compensation paid to all directors as a group during the last fiscal year. For the purposes of this paragraph, disclosure of compensation paid to and days served by directors

applies to any director who served in that capacity at any time during the reporting period. If applicable, describe any exceptional circumstances justifying the additional director compensation as authorized by § 611.400(c) of this chapter. For each director, state:

(1) The number of days served at board meetings;

(2) The total number of days served in other official activities, including any board committee(s);

(3) Any additional compensation paid for service on a board committee, naming the committee; and

(4) The total cash and noncash compensation paid to each director during the last fiscal year. Reportable compensation includes cash and the value of noncash items provided by a third party to a director for services rendered by the director on behalf of the reporting Farm Credit institution. Noncash compensation with an annual aggregate value of less than $5,000 does not have to be reported.

(c) *Compensation of senior officers.* Disclose the information on senior officer compensation and compensation plans as required by this paragraph. The institution must disclose the total amount of compensation paid to senior officers in substantially the same manner as the tabular form specified in the Summary Compensation Table (Compensation Table), located in paragraph (c)(3) of this section.

(1) For each of the last 3 completed fiscal years, report the total amount of compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO), naming the individual. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO.

(2) For each of the last 3 completed fiscal years, report the aggregate amount of compensation paid, and the components of compensation paid, to all senior officers as a group, stating the number of officers in the group without naming them.

(i) If applicable, when any employee who is not a senior officer has annual compensation at a level that is among the five highest paid by the institution during the reporting period, include the highly compensated employee(s) in the aggregate number and amount of compensation reported in the Compensation Table.

(ii) The report containing the aggregate compensation disclosure must include a statement that disclosure of information on the total compensation paid during the last fiscal year to any senior officer, or to any other employee included in the aggregate, is available and will be disclosed to shareholders of the institution and shareholders of related associations (if applicable) upon request. This statement must be located directly beneath the Compensation Table.

(3) The institution must complete the Compensation Table, or something substantially similar, according to the following instructions:

SUMMARY COMPENSATION TABLE

		Annual				
Name of individual or number in group	Year	Salary	Bonus	Deferred/ perquisite	Other	Total
(a)	(b)	(c)	(d)	(e)	(f)	(g)
CEO	20XX 20XX 20XX	$	$	$	$	$
Aggregate number of Senior Officers *(& other highly compensated employees, if applicable*):						
(X)	20XX					
(X)	20XX					
(X)	20XX					

(i) Amounts shown as ''Salary'' (column (c)) and ''Bonus'' (column (d)) must reflect the dollar value of salary and bonus earned by the senior officer during the fiscal year. Amounts contributed during the fiscal year by the senior officer pursuant to a plan established under section 401(k) of the Internal Revenue Code, or similar plan, must be included in the salary column or bonus column, as appropriate. If the amount of salary or bonus earned during the fiscal year is not calculable by the time the report is prepared, the reporting institution must provide its best estimate of the compensation amount(s) and disclose that fact in a footnote to the table.

(ii) Amounts shown as ''deferred/ perquisites'' (column (e)) must reflect the dollar value of other annual compensation not properly categorized as salary or bonus, including but not limited to:

(A) Deferred compensation earned during the fiscal year, whether or not paid in cash; or

(B) Perquisites and other personal benefits, including the value of noncash items, unless the annual aggregate value of such perquisites is less than $5,000. Reportable perquisites include cash and the value of noncash items provided by a third party to a senior officer for services rendered by the officer on behalf of the reporting institution. Reportable other personal benefits include the dollar value of any tax reimbursement provided by the institution.

(iii) Compensation amounts reported under the category ''Other'' (column (f)) must reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column must be specifically identified and described in a footnote to the table, including compensation relating to pensions and defined benefit plans that may also be reported in the ''Pension Benefits Table'' at paragraph (c)(4) of this section. ''Other'' compensation includes, but is not limited to:

(A) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination of such officer's employment with the institution;

(B) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is

made available to all employees on the same basis.

(iv) Amounts displayed under ''Total'' (column (g)) shall reflect the sum total of amounts reported in columns (c), (d), (e), and (f).

(4) If the institution provides a defined benefit plan or a supplemental executive retirement plan (SERP) to its senior officers, the institution must complete the following Pension Benefits Table, or something substantially similar, for each plan according to the following instructions:

PENSION BENEFITS TABLE

		Annual			
Name of individual	Years of credited service	Funded	Unfunded	Unvested	Total
CEO ..... Senior Officers as a Group *(& other highly compensated employees, if applicable*).	.....	$	$	$	$

(i) Report separately the present value of accumulated benefits for the CEO and the senior officer group.

(ii) Report the number of credited years of service in ''Years of credited service'' column.

(iii) Report the amount of the plan(s) that is unfunded in ''Unfunded'' column.

(iv) Report any off-balance sheet commitments, such as benefits earned but not yet vested, in the ''unvested'' column.

(v) Report the sum of the funded, unfunded, and unvested columns in the ''Total'' column.

(5) Provide a description of all compensation, retirement, incentive, performance, and other benefit plans (plans) pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year, to those individuals included in the Compensation Table. The description of each plan must include, but not be limited to:

(i) A summary of how each plan operates and who is covered by the plan. The summary must include the criteria used to determine amounts payable, including any performance formula or measure, as well as the time period over which the measurement of compensation will be determined, payment schedules, and any material amendments to the plan during the last fiscal year.

(ii) The overall risk and reward structure of the plan as it relates to senior officers' compensation. The description must include, at a minimum, how each plan is compatible with and promotes the institution's goals and business strategy and the mission as a Government-sponsored enterprise.

(iii) A discussion of the relationship between the CEO and senior officers' compensation to the reporting institution's overall performance. The disclosure must also discuss the relationship between the CEO's and senior officers' compensation to their performance.

(6) In the same vicinity as the Compensation Table, discuss any advisory votes that were held under the provisions of § 611.410 of this chapter during the reporting period and the results of the vote(s). For associations, include a discussion of whether or not the vote resulted from a shareholder petition. Each association must disclose in this same location the authority of shareholders to petition for an advisory vote on CEO and senior officer compensation.

(7) Associations may disclose the information required by paragraph (c) of this section in the Annual Meeting Information Statement (AMIS) pursuant to subpart E of this part. Associations exercising this option must include a reference in the annual report stating that the senior officer compensation information is included in the AMIS and that the AMIS is available for public inspection at the reporting association offices pursuant to § 620.2(b).

(d) *Travel, subsistence, and other related expenses.*

(1) Briefly describe your policy addressing reimbursements for travel, subsistence, and other related expenses as it applies to directors and senior officers. The report shall include a statement that a copy of the policy is available to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(2) For each of the last 3 fiscal years, state the aggregate amount of reimbursement for travel, subsistence, and other related expenses for all directors as a group.

(e) *Transactions with senior officers and directors.*

(1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) *Transactions other than loans.* For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of the immediate family of such person, or any organization with which such person is affiliated.

(i) For transactions relating to the purchase or retirement of preferred stock issued by the institution, state the name of each senior officer or director that held preferred stock issued by the institution during the reporting period, the current amount of preferred stock held by the senior officer or director, the average dividend rate on the preferred stock currently held, and the amount of purchases and retirements by the individual during the reporting period.

(ii) For all other transactions, state the name of the senior officer or director who entered into the transaction or whose immediate family member or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) *Loans to senior officers and directors.*

(i) To the extent applicable, state that the institution (or in the case of an association that does not carry loans to its senior officers and directors on its books, its related bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

(A) Were made in the ordinary course of business; and

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(ii) To the extent applicable, state that no loan to a senior officer or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectability; provided that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case later than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(iii) If the conditions stated in paragraphs (e)(3)(i) and (ii) of this section do not apply to the loans of the persons or organizations specified therein, with respect to such loans state:

(A) The name of the officer or director to whom the loan was made or to whose relative or affiliated organization the loan was made.

(B) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year.

(C) The nature of the loan(s).

(D) The amount outstanding as of the latest practicable date.

(E) The reasons the loan does not comply with the criteria contained in paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(F) If the loan does not comply with paragraph (e)(3)(i)(B) of this section, the rate of interest payable on the loan and the repayment terms.

(G) If the loan does not comply with paragraph (e)(3)(ii) of this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectability.

(f) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of any person who served as director or senior officer on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which such person was a senior officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting such person from engaging in any type of business practice.

Subpart C—Quarterly Report

19. Section 620.10 is amended by:

a. Revising paragraph (a); and

b. Adding a new paragraph (c) to read as follows:

§ 620.10 Preparing the quarterly report.

(a) Each institution of the Farm Credit System must:

(1) Prepare and send to the Farm Credit Administration an electronic copy of its quarterly report within 40 calendar days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution;

(2) Publish a copy of its quarterly report on its Web site when it electronically sends the report to the Farm Credit Administration; and

(3) Ensure the report complies with the applicable provisions of §§ 620.2 and 620.3 of this part.

* * * * *

(c) Institutions may use the quarterly report to deliver any notice required under § 620.15 of this part. Notices required under § 620.17 must be issued separately from the quarterly report, unless otherwise authorized by the Farm Credit Administration.

20. Section 620.11 is amended by:

a. Revising the introductory text of paragraph (b), paragraphs (c) and (d); and

b. Removing paragraphs (e) and (f) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(b) *Rules for condensation.* For purposes of this section, major captions to be provided in the financial statements are the same as those provided in the financial statements contained in the institution's annual report to shareholders, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph. If any amount that would otherwise be required to be shown by this subpart with respect to any item is not material, it need not be separately shown. The combination of insignificant items is permitted.

* * * * *

(c) *Required content.* A quarterly report must, at a minimum, contain the following items:

(1) *Management's discussion and analysis of financial condition and results of operations.* Discuss material changes, if any, to the information provided to shareholders pursuant to § 620.5(g) that have occurred during the periods specified in paragraphs (c)(2)(i) and (ii) of this section. Such additional information as is needed to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (c)(2)(i) and (ii) of this section shall be provided.

(i) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the institution.

(ii) *Material changes in results of operations.* Discuss any material changes in the institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. Such discussion also shall cover material changes with respect to that fiscal

quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

(2) *Interim financial statements.* The following financial statements must be provided:

(i) An interim balance sheet as of the end of the most recent fiscal quarter and as of the end of the preceding fiscal year. A balance sheet for the comparable quarter of the preceding fiscal year is optional.

(ii) Interim statements of income for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable periods for the previous fiscal year.

(iii) Interim statements of changes in protected borrower capital and at-risk capital for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(iv) For banks, interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year. For associations, interim statements of cash flows are optional.

(3) *Other related financial items.* State that the financial statements were prepared under the oversight of the audit committee. The interim financial information need not be audited or reviewed by a qualified public accountant or external auditor prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the institution may state that a qualified public accountant or external auditor has performed such a review under the supervision of the institution's audit committee. If such a statement is made, the report of a qualified public accountant or external auditor on such review must accompany the interim financial information.

(d) *Notices.* Institutions using the quarterly report to deliver any notice required under § 620.15 of this part must put the notice information at the beginning of the quarterly report. The notice must be conspicuous and may not be part of any footnotes to the quarterly report. Notices that are made part of the quarterly report must comply with the provisions of both this section and § 620.15.

Subpart D—Notice to Shareholders

21. Subpart D is amended by revising §§ 620.15 and 620.17 to read as follows:

§ 620.15 Notice of significant or material events.

(a) When a Farm Credit bank or association determines that it has a significant or material event, the institution must prepare and provide to its shareholders and the Farm Credit Administration a notice disclosing the event(s).

(1) Events covered under this provision include significant events defined in § 620.1(q) and material events defined in § 620.1(h).

(2) At a minimum, a notice must be issued for significant or material events involving compensation, retirement and benefit plans, capitalization plans or bylaws, results of shareholder votes, early director departures, unplanned departure of a senior officer, letters of intent to merge, changes in external auditors, and reportable Farm Credit Administration supervisory and enforcement actions.

(b) A notice issued under this section must be made as soon as possible, but not later than 90 days after occurrence of the event.

(1) Each institution must electronically provide the notice to the Farm Credit Administration at the same time as distribution of the notice to shareholders.

(2) Delivery of the notice to shareholders may be accomplished by direct communications with the shareholders, posting the notice on the institution's Web site, as part of the quarterly report to shareholders, or by publishing the notice in any publication with circulation wide enough to reasonably assure that all of the institution's shareholders have access to the information in a timely manner.

(c) Every notice must be dated and signed in a manner similar to the requirements of § 620.3(b).

(d) The information required to be included in a notice issued under this section must be conspicuous, easily understandable, complete, accurate, and not misleading.

§ 620.17 Special notice provisions for events related to minimum permanent capital.

(a) When a Farm Credit bank or association determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter, that institution must prepare and provide to its shareholders and the Farm Credit Administration a notice stating that the institution has initially determined it is not in compliance with minimum permanent capital standards. Such notice must be given within 30 days following the month end.

(b) When notice is given under paragraph (a) of this section, the institution must also notify its shareholders and the Farm Credit Administration when the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the original notice, or from that reported in a subsequent notice provided under this paragraph. This notice must be given within 45 days following the end of every quarter at which the institution's permanent capital ratio decreases as specified.

(c) Each institution required to prepare a notice under paragraphs (a) or (b) of this section shall provide the notice to shareholders or publish it in any publication with circulation wide enough to be reasonably assured that all of the institution's shareholders have access to the information in a timely manner. The information required to be included in this notice must be conspicuous, easily understandable, and not misleading.

(d) A notice, at a minimum, shall include:

(1) A statement that:

(i) Briefly describes the regulatory minimum permanent capital standard established by the Farm Credit Administration and the notice requirement of paragraph (a) of this section;

(ii) Indicates the institution's current level of permanent capital; and

(iii) Notifies shareholders that the institution's permanent capital is below the Farm Credit Administration regulatory minimum standard.

(2) A statement of the effect that noncompliance has had on the institution and its shareholders, including whether the institution is currently prohibited by statute or regulation from retiring stock or distributing earnings or whether the Farm Credit Administration has issued a capital directive or other enforcement action to the institution.

(3) A complete description of any event(s) that may have significantly contributed to the institution's noncompliance with the minimum permanent capital standard.

(4) A statement that the institution is required by regulation to provide another notice to shareholders within 45

days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the notice.

Subpart E—Annual Meeting Information Statements and Other Information To Be Furnished in Connection With Annual Meetings and Director Elections

22. Section 620.21 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 620.21 Contents of the information statement.

(a) * * *

(3) * * *

(i) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.6(e), or any of the events required to be disclosed in the annual report to shareholders under § 620.6(f) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.6(e) and (f) shall be made with respect to such transactions or events in the information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.6(e) and (f) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the information statement.

* * * * *

Subpart F—Bank and Association Audit and Compensation Committees

23. Section 620.31 is revised to read as follows:

§ 620.31 Compensation committees.

Each Farm Credit bank and association must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The compensation committee must report only to the board of directors. All compensation committees will be required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(a) *Composition.* Each compensation committee must consist of at least three members and all committee members must be members of the institution's board of directors. Every member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(b) *Responsibilities.* It is the responsibility of each compensation committee to review the compensation policies and plans for senior officers and employees and to approve the overall compensation program for senior officers. In fulfilling its responsibilities, the compensation committee must document that it:

(1) Analyzed the institution's projected long-term compensation and retirement benefit obligations and determined such obligations are appropriate to the services performed and not excessive.

(2) Reviewed incentive-based compensation programs and payments and determined that they were not unreasonable or disproportionate to the services performed and were structured so the payout schedule considered the potential for future losses or risks to the institution.

(3) Reviewed senior officer compensation, incentive and benefit programs and determined that they support the institution's long-term business strategy, as well as promote safe and sound business practices.

(4) Reviewed compensation programs designed for specific groups of employees, other than senior officers, to ensure the plan(s) pose no imprudent risk to the institution.

(c) *Resources.* Each institution must provide monetary and nonmonetary resources to enable its compensation committee to perform its duties.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEM–WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

24. The authority citation for part 630 is revised to read as follows:

Authority: Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—General

25. Section 630.6 is amended by revising paragraph (b) to read as follows:

§ 630.6 Funding Corporation committees.

* * * * *

(b) *Compensation committee.* The Funding Corporation must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The compensation committee must report only to the board of directors. The compensation committee will be required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(1) *Composition.* The committee must consist of at least three members and all members must be members of the Funding Corporation's board of directors. Every compensation committee member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(2) *Responsibilities.* It is the responsibility of the compensation committee to review the compensation policies and plans for senior officers and employees and to approve the overall compensation program for senior officers. In fulfilling its responsibilities, the compensation committee must document that it:

(i) Analyzed the Funding Corporation's projected long-term compensation and retirement benefit obligations and determined such obligations are appropriate to the services performed and not excessive.

(ii) Reviewed incentive-based compensation programs and payments and determined that they were not unreasonable or disproportionate to the services performed and were structured so the payout schedule considered the potential for future losses or risks to the Funding Corporation.

(iii) Reviewed senior officer compensation, incentive and benefit programs and determined that they support the Funding Corporation's long-term business strategy and mission, as well as continue to promote safe and sound business practices.

(3) *Resources.* The Funding Corporation must provide monetary and nonmonetary resources to enable its compensation committee to perform its duties.

Subpart B—Annual Report to Investors

26. Section 630.20 is amended by revising paragraph (i) to read as follows:

§ 630.20 Contents of the annual report to investors.

* * * * *

(i) *Compensation of directors and senior officers.* State that information on the compensation of directors and senior officers of Farm Credit banks is contained in each bank's annual report to shareholders and that the annual report of each bank is available to investors upon request pursuant to § 630.3(g). State whether advisory votes were held in any of the disclosure

entities during the reporting period and the results of such vote.

* * * * *

Dated: January 12, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–901 Filed 1–20–12; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0034; Directorate Identifier 2011–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by a report of a fire which started in the vicinity of an electrical panel that was fed by oxygen escaping from a damaged third crew person oxygen line that occurred while the airplane was on the ground. This proposed AD would require replacing and changing the routing of the flexible oxygen hose of the third crew person oxygen line and modifying the entrance compartment assembly. We are proposing this AD to prevent the possibility of damage to the third crew person oxygen line and an oxygen-fed fire in the airplane.

DATES: We must receive comments on this proposed AD by March 8, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone (514) 855–5000; fax (514) 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0034; Directorate Identifier 2011–NM–153–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–23, dated July 14, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An operator has reported a ground fire in the CL–600–2B19 aeroplane. The fire burnt an 18 inch hole through the left upper fuselage skin panel in the cockpit area. The fire started in the vicinity of the Junction Box 1 (JB1) electrical panel, and was fed by oxygen escaping from a damaged third crewman oxygen line.
>
> This [TCCA] Airworthiness Directive (AD) was issued to prevent the possibility of damage to the third crewman oxygen line and an oxygen fed fire in the aeroplane.

The required actions include replacing and changing the routing of the flexible oxygen hose of the third crew person oxygen line and modifying the entrance compartment assembly. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 601R–35–017, Revision A, dated June 9, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 588 products of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $108 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $713,244, or $1,213 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0034; Directorate Identifier 2011–NM–153–AD.

(a) Comments Due Date

We must receive comments by March 8, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, equipped with entrance compartment assembly having part numbers that begin with A281001, A282001, A283001, A284001, 4591001, 4592001, 4593001, or 4594001.

(d) Subject

Air Transport Association (ATA) of America Code 35: Oxygen.

(e) Reason

This AD was prompted by a report of a fire which started in the vicinity of an electrical panel that was fed by oxygen escaping from a damaged third crew person oxygen line that occurred while the airplane was on the ground. We are issuing this AD to prevent the possibility of damage to the third crew person oxygen line and an oxygen-fed fire in the airplane.

(f) Compliance

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

(g) Actions

Within 4,000 flight hours after the effective date of this AD, replace and change the routing of the flexible oxygen hose of the third crew person oxygen line and modify the entrance compartment assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–35–017, Revision A, dated June 9, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install an entrance compartment assembly with a part number that begins with A281001, A282001, A283001, A284001, 4591001, 4592001, 4593001, or 4594001, or a flexible oxygen hose with part number 38027–0260, on any airplane, unless that entrance compartment assembly or flexible oxygen hose has been modified, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–35–017, Revision A, dated June 9, 2011.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–23, dated July 14, 2011; and Bombardier Service Bulletin 601R–35–017, Revision A, dated June 9, 2011; for related information.

Issued in Renton, Washington on January 13, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1197 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1340; Airspace Docket No. 11–AEA–22]

Proposed Establishment of Class E Airspace; Grasonville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Grasonville, MD, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Queen Anne E.R. Heliport. This action would

enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before March 8, 2012.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–(800) 647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–1340; Airspace Docket No. 11–AEA–22, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1340; Airspace Docket No. 11–AEA–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1340; Airspace Docket No. 11–AEA–22. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Grasonville, MD, providing the controlled airspace required to support the Copter RNAV GPS special standard instrument approach procedures at Queen Anne E.R. Heliport. Controlled airspace extending upward from 700 feet above the surface is necessary for IFR operations within a 6-mile radius of the heliport.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Queen Anne E.R. Heliport, Grasonville, MD.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA MD E5 Grasonville, MD [New]

Queen Anne E.R. Heliport, MD
(Lat. 38°58′03″ N., long. 76°10′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Queen Anne E.R. Heliport.

Issued in College Park, Georgia, on January 12, 2012.

Michael Vermuth,

Acting Manager, Operation Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–1203 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0035; Directorate Identifier 2011–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 767–200 and –300 series airplanes. This proposed AD was prompted by reports of fatigue cracking on the lower main sill inner chord of the hatch opening of the overwing emergency exit. This proposed AD would require repetitive inspections for cracking, corrosion damage, and any other irregularity of the lower main sill inner chord and surrounding structure, and repair if necessary. We are proposing this AD to detect and correct fatigue cracking on the lower main sill inner chord of the hatch opening of the overwing emergency exit, which could result in reduced structural integrity of the hatch opening of the overwing emergency exit and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by March 8, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0035; Directorate Identifier 2011–NM–178–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of fatigue cracking on the lower main sill inner chord of the hatch opening of the overwing emergency exit on an airplane that had completed 42,079 total flight cycles. This condition, if not corrected, could result in reduced structural integrity of the hatch opening of the overwing emergency exit and consequent rapid decompression of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011. This service information describes procedures, depending on the airplane configuration, for repetitive high frequency eddy current inspections for cracking of the lower main sill inner chord around body station (STA) 883.5; repetitive detailed inspections for cracking, corrosion damage, and any other irregularity of the lower main sill inner chord and surrounding structure around STA 883.5; and repetitive detailed inspections for cracking, corrosion damage, and any other irregularity of the lower main sill inner chord and surrounding structure around STA 903.5. This service information also describes procedures for repair of certain cracking, corrosion damage, or other irregularity, if necessary.

The initial compliance time for the inspections is at the later of: (1) before 37,500 total flight cycles and (2) within 3,000 flight cycles ''after the original issue date of the service bulletin.'' The repetitive intervals are 3,750 flight cycles and 7,500 flight cycles, depending on the inspection type.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between Proposed AD and the Service Information

Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, specifies that the sequence of steps to do the required actions can be changed, but this proposed AD requires that the actions must be done in sequence.

Costs of Compliance

We estimate that this proposed AD affects 377 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	28 work-hours × $85 per hour = $2,380 per inspection cycle.	$0	$2,380 per inspection cycle	$897,260 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0035; Directorate Identifier 2011–NM–178–AD.

(a) Comments Due Date

We must receive comments by March 8, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category, as specified in Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracking on the lower main sill inner chord of the hatch opening of the overwing emergency exit. We are issuing this AD to detect and correct fatigue cracking on the lower main sill inner chord of the hatch opening of the overwing emergency exit, which could result in reduced structural integrity of the hatch opening of the overwing emergency exit and consequent rapid decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections and Repair

Within the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, except as provided by paragraph (h)(3) of this AD: Do a high frequency eddy current (HFEC) inspection for cracking of the lower main sill inner chord around body station (STA) 883.5; a detailed inspection for cracking, corrosion damage, and any other irregularity, of the lower main sill inner chord and surrounding structure around STA 883.5; and a detailed inspection for cracking, corrosion damage, or other irregularity, of the lower main sill inner chord and surrounding structure around STA 903.5; as applicable; and do all applicable repairs; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, except as required by paragraphs (h)(1) and (h)(2) of this AD. Do all applicable repairs before further flight. Repeat the applicable inspections thereafter within the applicable times and intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011. Doing a structural repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, terminates the repetitive inspections for that location only.

(h) Exceptions

(1) If any cracking, corrosion damage, or other irregularity is found during any inspection required by this AD, and Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking, corrosion damage, or other irregularity, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(2) Where Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, specifies that the sequence of steps to do the actions can be changed, this AD does not allow the sequence of steps to be changed.

(3) Where Boeing Alert Service Bulletin 767–53A0228, dated July 28, 2011, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6577; fax: (425) 917–6590; e-mail: *berhane.alazar@faa.gov*.

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

Issued in Renton, Washington on January 13, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1202 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0036; Directorate Identifier 2011–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by test reports showing that failure of a retract port flexible hose of a main landing gear (MLG) retraction actuator could cause excessive hydraulic fluid leakage. This proposed AD would require a detailed inspection for defects and damage of the retract port flexible hose on the left and right MLG retraction actuator, and replacement of the flexible hose if needed. We are proposing this AD to detect and correct defects and damage of the retract port flexible hose which could lead to an undamped extension of the MLG and could result in MLG structural failure, leading to an unsafe asymmetric landing configuration.

DATES: We must receive comments on this proposed AD by March 8, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone (416) 375–4000; fax (416) 375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0036; Directorate Identifier 2011–NM–142–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–14, dated June 17, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Testing has shown that in the event of a main landing gear (MLG) retraction actuator retract port flexible hose failure, in-flight vibrations may cause excessive hydraulic fluid leakage. This could potentially lead to an undamped extension of the MLG, which

may result in MLG structural failure, leading to an unsafe asymmetric landing configuration.

This [TCCA] directive mandates the [detailed] inspection of the retract port flexible hose [for defects and damage] and its replacement [installing a new retract port flexible hose], when required, to prevent damage to the MLG caused by undamped gear extensions.

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–32–89, dated March 22, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 81 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,885, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing $0, for a cost of $340 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0036; Directorate Identifier 2011–NM–142–AD.

(a) Comments Due Date

We must receive comments by March 8, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, -401, and -402 airplanes; certificated in any category; serial numbers 4001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by test reports showing that failure of a retract port flexible hose of a main landing gear (MLG) retraction actuator could cause excessive hydraulic fluid leakage. We are issuing this AD to detect and correct defects and damage of the retract port flexible hose which could lead to an undamped extension of the MLG and could result in MLG structural failure, leading to an unsafe asymmetric landing configuration.

(f) Compliance

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

(g) Actions

Within 600 flight hours after the effective date of this AD, do a detailed inspection for defects and damage of the retract port flexible hose of the left and right MLG retraction actuators, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–89, dated March 22, 2011. Repeat the inspection thereafter at intervals not to exceed 600 flight hours. If any defect or damage is found, before further flight, replace the retract port flexible hose with a new or serviceable retract port flexible hose in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–89, dated March 22, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

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

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–14, dated June 17, 2011; and Bombardier Service Bulletin 84–32–89, dated March 22, 2011; for related information.

Issued in Renton, Washington on January 13, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1210 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Rules of Practice

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Proposed rule amendments; request for public comment.

SUMMARY: The FTC is proposing to amend parts of its regulations. The proposed amendments would make changes to the FTC's investigatory procedures in the interest of fairness, efficiency, and openness in all FTC investigations. The amendments would also revise the Commission's rules governing reprimand, suspension, and disbarment of attorneys practicing before the Commission.

DATES: Written comments must be received on or before March 23, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part (subsection III) of the **SUPPLEMENTARY INFORMATION** section below. Write ''Parts 2 and 4 Rules of Practice Rulemaking (16 CFR Parts 2 and 4) (Project No. P112103)'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/rulespart2and4.1nprm*, by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Y), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed revisions to the investigatory procedures, contact Lisa M. Harrison, Assistant General Counsel, (202) 326–3204, or W. Ashley Gum, Attorney, (202) 326–3006, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For information on the proposed revisions to the rule governing attorney discipline, contact Peter J. Levitas, Deputy Director, Bureau of Competition, (202) 326–2030, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This discussion contains the following sections:

I. Introduction

1. Need for Reform of the Commission's Investigatory Process

The Commission has periodically examined and revised its Rules of Practice in the interest of clarifying the Rules and making the Commission's procedures more efficient and less burdensome for all parties.[1] Especially in response to growing reliance upon and use of electronic media in document discovery, the Commission has reviewed its current rules governing the process of nonadjudicative investigations (''Part 2 Rules'').

Document discovery today is markedly different than it was only a decade ago. The growing prevalence of business files in electronic form—email, voicemail, text messages, blogs, word processing documents, PowerPoint presentations, videos, spreadsheets, and data files—has changed document discovery in several ways. First, information is no longer accurately measured in pages, but instead in megabytes, gigabytes, terabytes, and more. Second, because electronically stored information (''ESI'') is widely dispersed throughout organizations, parties can no longer complete searches by merely looking in file cabinets and desk drawers. While searchers must still reach into file cabinets and desk drawers, they must also—and primarily—seek and retrieve information from mainframe computers, shared servers, computers, cell phones, smart phones, portable devices, and other media, as well as from third-party service providers. Third, because ESI is broadly dispersed and not always consistently organized by its custodians, searches, identification, and collection all require special skills and, if done properly, may utilize one or more search tools such as advanced key word searches, Boolean connectors, Bayesian logic, concept searches, predictive coding, and other advanced analytics. Fourth, because ESI may be readily altered, it must be preserved early in any discovery process—or even before discovery, when litigation is anticipated—and handled carefully at all stages to preserve its accuracy, authenticity, and ultimate admissibility. Fifth, even when investigations are conducted cooperatively, and are both well organized and well managed, there remains a substantial risk that mistakes and delays will occur as the responding party collects responsive materials, analyzes them for relevance and privilege, and prepares them for production.

The need to reform Part 2 Rules is also based in part on concerns that modern document discovery and its attendant complexities have become a source of delay in the Commission's securing the information it needs to complete its investigations. Thus, the Commission views its reexamination of the rules as an opportunity not only to account for the widespread use of ESI, but also to improve the efficiency of investigations, and the willingness of targets and third parties to cooperate.

2. Overview of Proposed Rule Revisions

The proposed changes to the Part 2 Rules would expedite Commission investigations by: (1) Conditioning any extensions of time to comply with Commission processes on a party's continued progress in achieving compliance; (2) conditioning the filing of any petition to quash or limit Commission process on a party having engaged in meaningful ''meet and confer'' sessions with Commission staff; and (3) removing the two-step process for resolving petitions to quash and establishing tighter deadlines for the Commission to rule on petitions.

The proposed revisions are also intended to streamline the rules and add structure to the agency's investigatory process by consolidating related provisions that are currently scattered throughout Part 2. The rules also update investigatory practices, especially in light of the ubiquity of ESI, by including express references to ESI in the rules. Finally, they facilitate the enforcement of Commission compulsory process by clarifying the rights and obligations both of agency staff and compulsory process recipients.

[1] *See, e.g.,* 74 FR 1828 (Jan. 13, 2009).

The Commission also proposes to amend the attorney disciplinary procedures codified in current Rule 4.1(e) in order to address more effectively any misconduct by attorneys practicing before the agency. The proposed amendments are designed to provide additional guidance regarding appropriate standards of conduct, and procedures for addressing alleged violations of those standards.

Finally, the Commission intends to make certain technical revisions throughout the rules including, for example, eliminating the convention of specifying numbers in both written and numerical form, and substituting gender-neutral language. The proposed rule revisions relate solely to agency practice and, thus, are exempt from the notice-and-comment requirements of the Administrative Procedure Act (''APA''). 5 U.S.C. 553(b)(3)(A). Nonetheless, the FTC is issuing the revisions as a proposed rule for public comment in order to benefit from the input of affected parties. The proposed revisions are also not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2), the requirements of the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1)(B)(ii), and 5 CFR 1320.4 (exempting information collected during the conduct of administrative proceedings or investigations). If finalized, these revisions would govern all Commission investigations commenced on or after the date on which the rules are issued. The amendments would also govern all Commission investigations pending as of that date, unless the Commission, acting through its managers, determines that the application of an amended rule in a particular investigation would not be feasible or would create an injustice.

II. Section-by-Section Analysis of Proposed Rule Revisions

The following is a section-by-section analysis of the proposed revisions to Part 2 of the Commission's Rules, and the proposed revision to Rule 4.1, which provides for new attorney discipline procedures.

Section 2.2: Request for Commission Action

The Commission would amend this Rule to account for new web-based methods of submitting complaints and requests for agency action, and to avoid repetition of certain provisions in current Rule 2.1. The latter Rule—which the Commission does not propose to revise—identifies how, and by whom, any Commission inquiry or investigation may be initiated. Rule 2.2 describes the procedures that apply when members of the public or other parties outside of the agency request Commission action.

Section 2.4: Investigational Policy

The revisions to this Rule would underscore the importance of cooperation between recipients of compulsory process and FTC staff to resolve issues related to compliance with CIDs and subpoenas. The proposed Rule affirms the Commission's endorsement of voluntary cooperation in all investigations, but would view cooperation as a complement—rather than a mutually exclusive alternative—to compulsory process. This revision is intended to more accurately account for the complexity and scope of modern discovery, specifically the electronic discovery so prevalent in Commission investigations.

Equally important, the Commission's revised investigational policy would also endorse the principles articulated in the Sedona Conference's ''Cooperation Proclamation'' [2] and Fed. R. Civ. P. 1's call for ''just, speedy, and inexpensive'' adjudication and apply them where they fit into law enforcement investigations. The Sedona Conference has been instrumental in providing guidance to practitioners with respect to modernized discovery practices. Numerous authorities, including more than 100 judges nationwide have endorsed the Cooperation Proclamation since its release, and the Commission believes that it provides a sound articulation of ''best practices'' in modern discovery.

Section 2.6: Notification of Purpose

The Commission would amend this Rule to clarify staff's ability to disclose the existence of an investigation to certain parties. The added provision would restate longstanding agency policy and practice recognizing that staff may at times need to disclose the existence of an otherwise non-public investigation, or the identity of a proposed respondent, to potential witnesses, informants, or other non-law-enforcement groups.

Section 2.7: Compulsory Process in Investigations

The revisions to this Rule would consolidate and re-designate into one rule the compulsory process provisions now found in Rules 2.8, 2.10, 2.11, and 2.12. Although the proposed revisions would encompass all types of documentary material sought by the Commission, the revisions would better reflect modern document retention and production practices by expressly accounting for the use of new technologies.[3]

The Commission expects the proposed revisions to substantially expedite its investigations by: (1) Conditioning any extensions of time to comply on a party demonstrating its progress in achieving compliance; (2) articulating staff's authority to inspect, copy, or sample documentary material—including electronic media—to ensure that parties are employing viable search and compliance methods; and (3) requiring parties to ''meet and confer'' with staff within ten days after compulsory process is received to discuss compliance with compulsory process and to address and attempt to resolve potential problems relating to document production.

Finally, the proposed revisions to this Rule would update and streamline the process for taking oral testimony by requiring corporate entities to designate a witness to testify on their behalf, as provided in FRCP Rule 30(b)(6), and by allowing testimony to be videotaped or recorded by means other than stenograph.

Section 2.9: Rights of Witnesses in Investigations

Current Rule 2.9 details the rights of witnesses in Commission investigations, including witnesses compelled to appear in person at an investigational hearing or deposition. Rule 2.9(b)(2) permits a witness at an investigational hearing to refuse to answer questions that call for privileged information. As it is currently written, the rule does not provide guidance regarding the perimeters of the privileges that may be asserted. Counsel for witnesses have sometimes taken advantage of the rule's lack of clarity by repeating objections, excessively consulting with their clients during the hearing, and otherwise employing arguably obstructionist tactics. Revised Rule 2.9(b)(1) is

[2] The Sedona Conference is a nonprofit research and educational institute whose members are judges, attorneys and academics. The institute's Cooperation Proclamation declares that ''the legal profession can engage in a comprehensive effort to promote pre-trial discovery cooperation. Our 'officer of the court' duties demand no less. This project * * * is a tailored effort to effectuate the mandate of court rules calling for a 'just, speedy, and inexpensive determination of every action' and the fundamental ethical principles governing our profession.'' *See http://www.thesedonaconference.org/content/tsc_cooperation_proclamation/proclamation.pdf.*

[3] The term ''electronic media'' is not a legal term of art. The Commission recommends the use of the term throughout the revised Rules for precisely this reason; it does not want any single technological advance in data storage or production to render a Rule provision obsolete.

intended to prevent counsel from improperly engaging in such tactics during an investigational hearing or deposition conducted pursuant to Section 9 of the FTC Act by prohibiting consultation except with respect to issues of privilege or other protected status. The Commission believes that such a provision is necessary to prevent obstructionist conduct and has concluded that this revision is supported by federal court decisions that prevent counsel for a witness from conferring with the witness during a deposition while a question is pending.[4] As one court has observed, such coaching ''tend[s], at the very least, to give the appearance of obstructing the truth.'' [5] Many district courts have adopted rules prohibiting consultation in depositions while a question is pending.[6] Also persuasive is the Advisory Committee's notes to Fed. R. Civ. P. 30, which associate the general regulation of attorney conduct during a deposition with the more specific prohibition against improper coaching.[7]

The Commission also proposes revising this Rule to clarify the process for resolving those privilege objections that require a recess in a deposition or investigational hearing. At present, the validity of a witness's assertion of privilege during an investigational hearing is resolved definitively only through an enforcement action in district court, in accordance with the provisions of Rule 2.13, and not as part of a petition to limit or quash a subpoena in accordance with the provisions of existing Rule 2.7(d). Revised Rule 2.9(b)(3) would clarify the process for resolving privilege objections during a deposition or investigational hearing by expressly granting to Commission investigators the ability to recess, and subsequently continue, a course of inquiry interrupted by a witness's privilege objection. The new rule also states expressly that the Commission may file an enforcement action if the witness fails to reappear.

Section 2.10: Petitions To Limit or Quash Commission Compulsory Process

The Commission proposes to consolidate the provisions governing petitions to limit or quash [8] into a re-designated Rule 2.10. Apart from this consolidation, the revised Rule would clarify the process for filing and ruling on such petitions. Revised paragraph (a)(3) provides guidance to parties in instances where the Commission investigator elects to recess and reconvene an investigational hearing to continue a line of questioning that was interrupted by a witness's privilege objection. The provisions of 2.10 expressly allow the Commission investigator to recess the hearing and give the witness an opportunity to challenge the reconvening of the hearing by filing a petition to limit or quash the Commission's compulsory process directing his or her initial appearance. Paragraph (a)(4) clarifies the right of Commission staff to respond to a petition to limit or quash.

To expedite rulings on petitions to quash, the revised Rule would provide that the Commission itself, rather than a designated Compulsory Process Commissioner, would rule upon petitions to quash or limit in the first instance. This amendment is designed to address the fact that it has now become standard procedure for petitioners to file requests for review of virtually all letter rulings issued by the Compulsory Process Commissioner, frequently by simply filing a request for review and attaching to that request the original petition to quash or limit in its entirety. The current practice now results in substantial delays in disposing of petitions to quash or limit without offering any countervailing advantages. Second, the Commission proposes a new Rule 2.10(c) to provide for a 30-day deadline for the issuance of an order ruling on a petition to limit or quash.[9] To facilitate expedited review of petitions to limit or quash, the Commission also proposes an amended paragraph (a)(1), providing that petitions be limited to 3,750 words (approximately 15 pages). The word limit would not apply to affidavits or other supporting documentation.

Section 2.11: Withholding Requested Material

This proposed Rule would revise and re-designate current Rule 2.8A to require parties to give more meaningful and specific information concerning privilege claims in Part 2 investigative proceedings. Parties withholding requested material would be subject to the revised Rule 2.11, which would set out specifications for a privilege log to be submitted to the Commission in lieu of a motion to limit or quash compulsory process.

As part of its comprehensive reforms governing adjudicative proceedings, in 2009, the Commission amended Rule 3.38A to eliminate the requirement that a privilege log must always contain specific information for each item being withheld.[10] The Commission substituted the more flexible requirement of Fed. R. Civ. P. 26(b)(5)(A), which prescribes that the nature of the materials withheld be described ''in a manner that * * * will enable other parties to assess the claim.'' The Commission believes that the Part 2 Rule should contain a more specific requirement because there is no neutral Administrative Law Judge (''ALJ'') available in Part 2 proceedings to analyze the sufficiency of the log. At present, the Commission's sole recourse in a Part 2 investigation is to file an enforcement action in federal court.

The proposed amendment would require detailed descriptions of the withheld material (including the number of pages or bytes comprising the privileged material and the respective dates when the material was both created and sent), and descriptions of the authors and recipients of the material (including the parties' names, titles, physical addresses, email addresses, and organizations). The revision would also require the person claiming a privilege to provide a factual basis for the claims. Finally, the proposed privilege log would be notarized by the ''lead attorney'' on the matter, to avoid instances where junior-level attorneys or non-lawyer ESI specialists might notarize a log and thereby attempt to shield senior attorneys from sanctions in the event of misrepresentation.

Paragraph (b) of the proposed rule allows the requirements to be modified as the result of any agreement reached during the ''meet and confer'' session. In some situations, less detailed requirements (for example, allowing

[4] *See, e.g., Hall* v. *Clifton Precision,* 150 F.R.D. 525, 528 (E.D. Pa. 1993); *Plaisted* v. *Geisinger Med. Ctr.,* 210 F.R.D. 527, 535 (M.D. Pa. 2002).

[5] *Hall,* 150 F.R.D. at 528.

[6] *See, e.g.,* D. Col. L. Civ. R. 30.3(A) (Sanctions for Abusive Deposition Conduct); S.D. Ind. LR 30.1(b) (Private Conference with Deponent), E.D.N.Y. L. Civ. R. 30.6 (Conferences Between Deponent and Defending Attorney); S.D.N.Y. L. Civ. R. 30.6 (Conferences Between Deponent and Defending Attorney); M.D.N.C, LR 204(b); (Differentiated Case Management and Discovery); N.D. Ohio LR 30.1(b); D. Or. LR 30–5; D. Wyo. LR 30 (Depositions Upon Oral Examination).

[7] *See, e.g.,* Fed. R. Civ. P. 30 advisory committee's note (1993 Amendments) (noting that ''[d]epositions frequently have been unduly prolonged, if not unfairly frustrated, by lengthy objections and colloquy, often suggesting how the deponent should respond. While objections may * * * be made during a deposition, they ordinarily should be limited to * * * objections on grounds that might be immediately obviated, removed, or cured, such as to the form of a question or the responsiveness of an answer * * *. Directions to a deponent not to answer a question can be even more disruptive than objections.'').

[8] At present, the provisions are found in Rules 2.7(d)–(e), 2.11(b)–(d), and 2.12(c)–(e).

[9] The Commission would retain its inherent authority to extend this time period if the petition is not acted upon within 30 days.

[10] *See* 73 FR 58839.

documents to be described by category) may suffice to assess privilege claims. This revision is designed to encourage cooperation and facilitate partial privilege logs, such as those encouraged by the Commission's ''best practices'' in merger cases.[11]

Paragraph (c) of the proposed rule addresses an issue that has arisen in some recent investigations wherein the targets of Part 2 investigations, in contravention of instructions in a subpoena issued by the Commission, redacted numerous documents that were not claimed to be protected by any privilege. Paragraph (c) highlights the instruction by explicitly providing that responsive material for which no privilege claim has been asserted must be produced without redaction.

Finally, the suggested revised Rule also incorporates recent changes in Commission Rules 3.31(g), 3.38A, and Fed. R. Evid. 502 regarding the return or destruction of inadvertently disclosed material. The Federal Rule sets the new standard for subject matter waiver in the United States. As previously noted with respect to the Part 3 revisions,[12] the risk of privilege and work product waiver, and the resources used to avoid it, significantly increase the costs and delay of discovery. This risk is amplified when a party is asked to produce ESI. The Commission believes that requiring parties to make only those efforts reasonably necessary to protect privilege or immunity will reduce the time and effort needed to avoid waivers.

Section 2.13: Noncompliance With Compulsory Process

The proposed Rule amendment would expedite the Commission's Hart-Scott-Rodino enforcement process by delegating to the General Counsel the authority to initiate enforcement proceedings for noncompliance with a Hart-Scott-Rodino second request under 15 U.S.C. 18a(g)(2) (''(g)(2) actions''). The Commission believes this change is appropriate because it would enable the General Counsel to file (g)(2) actions quickly and without the need for a formal recommendation by staff to the Commission, and a subsequent Commission vote. The revised Rule would also authorize the General Counsel to initiate an enforcement action in connection with noncompliance of a Commission order requiring access pursuant to 15 U.S.C. 49, in addition to compliance with compulsory process already covered in the existing Rule.

Section 2.14: Disposition

Rule 2.14 applies after the Commission determines whether to take corrective action following an investigation. If corrective action is deemed necessary, the Commission may elect to institute proceedings in Part 3 or in federal court. If corrective action is not necessary, the investigation is usually closed. Past subjects of Commission investigations have occasionally expressed informal concerns about the lack of a formal notification process following the disposition of an investigation, especially in light of the fact that at times staff does not affirmatively issue closing letters.[13] Currently, if a party does not receive notification that a matter has been closed, it is under a continuing obligation to preserve documents.

To address these concerns, the Commission proposes a new paragraph (c) to Rule 2.14. Paragraph (c) is intended to benefit both the subjects of FTC investigation and third parties by relieving them of any obligation to preserve documents after a year passes with no written communication from the Commission or staff. The Commission believes this revision is warranted because the retention and preservation of information, documentary material, and other evidence can, depending on the volume, be expensive—and wasteful if unnecessary. In many instances such retention and preservation can expose the custodian to potential liability; for example, sensitive personal or medical information, or non-current (but still sensitive) trade information and data can all cause substantial problems for a firm if lost, stolen, or hacked into. The Commission also notes that in some circumstances, 18 U.S.C. 1519 threatens imprisonment for any party who violates an obligation to retain such materials if an investigation is pending. Equally significant, third parties are generally not informed when one of the agency's non-public investigations has been concluded. In sum, recipients of compulsory process report that they often do not know when they are relieved of any obligation to retain information or materials for which neither the agency nor they have any use; nor are they inclined to ask about the status of an investigation for fear of renewed agency attention. The proposed Rule 2.14 revisions would relieve parties of any obligation to preserve documents if twelve months pass with no written communication from the Commission or staff.

Section 4.1: Appearances

Rule 4.1(e) governs the administration of attorney discipline for attorneys practicing before the Commission. The Commission proposes to amend this Rule to provide additional guidance regarding the type of conduct that may warrant disciplinary action. The revised Rule provides for disciplinary action where an attorney engages in conduct during a Commission investigation or other proceeding that is contemptuous, obstructionist, or violates appropriate standards of professional conduct, as well as where an attorney knowingly or recklessly provides false or misleading information to the Commission or its staff. In addition, the revised Rule provides that a supervising attorney may be responsible for another attorney's violation of these standards of conduct if he or she orders or ratifies the other attorney's misconduct, or has managerial authority over the attorney.

The revised Rule also establishes a new framework for evaluating and adjudicating allegations of misconduct by attorneys practicing before the Commission. The revised Rule provides for Commission staff to submit allegations of misconduct on a confidential basis to designated officers within the Bureaus of Competition or Consumer Protection with the authority to investigate such charges. The rule establishes procedures for the investigation of alleged misconduct and authorizes an investigating officer to request that the Commission issue compulsory process to facilitate an investigation of the allegations. After completion of an investigation, the revised rule provides the investigating officer with discretion to determine whether the allegations warrant further action and, if so, to recommend the charges to the Commission for its consideration.

The revised Rule also introduces a process for issuance of attorney reprimands without an evidentiary hearing in appropriate circumstances. The revised Rule provides that the Commission may issue a public reprimand, after the subject of an investigation has been given notice and an opportunity to respond during the course of the investigation, if it determines, based on the attorney's response, if any, and the record before it, that the attorney has engaged in professional misconduct warranting a public reprimand.

In cases where the Commission determines that a full administrative disciplinary proceeding is warranted to

[11] *See http://www.ftc.gov/os/2006/02/mergerreviewprocess.pdf.*

[12] *See* 73 FR 58839.

[13] Because closing letters are public, some companies affirmatively request that no closing letter be issued.

determine if a reprimand, suspension, or disbarment should be imposed, the Rule provides for the Commission to institute disciplinary proceedings by serving an order to show cause on the respondent attorney and assigning the matter to an ALJ.[14] The revised Rule grants the ALJ the necessary powers to oversee expeditious attorney disciplinary proceedings, including the authority to allow for limited discovery and the filing of pleadings. Agency attorneys—appointed by the Director of the Bureau that has proffered the allegations—would serve as Commission counsel during a hearing to adjudicate the allegations of misconduct.

Revised Rule 4.1(e) also establishes expedited procedures to allow the Commission to suspend an attorney temporarily in the event that it receives official notice from a state bar that an attorney has been suspended or disbarred by that authority, pending a full disciplinary proceeding to assess the need for a permanent disbarment from practice before the Commission. These summary procedures would provide the Commission the ability to act promptly to suspend attorneys that have been found guilty by a state bar of conduct warranting suspension or disbarment.

III. Invitation To Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon its proposal to revise its Part 2 and 4 Rules. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue specific amendments.

You can file a comment online or in a written document. For the Commission to consider your comment, we must receive it on or before March 23, 2012. Write ''Notice of Proposed Rulemaking on Parts 2 and 4 of the FTC's Rules of Practice (16 CFR Parts 2 and 4) (Project No. P112103)'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[15] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/rulespart2and4.1nprm*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Notice of Proposed Rulemaking on Parts 2 and 4 of the FTC's Rules of Practice (16 CFR Parts 2 and 4) (Project No. P112103)'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Y), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

IV. Proposed Rule Revisions

List of Subjects in 16 CFR Parts 2 and 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter 1, Subchapter A of the Code of Federal Regulations, parts 2 and 4, as follows:

PART 2—NONADJUDICATIVE PROCEDURES

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

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Revise § 2.2 to read as follows:

§ 2.2 Request for Commission action.

(a) A complaint or request for Commission action may be submitted via the Commission's web-based complaint site (*https://www.ftccomplaintassistant.gov*); by a telephone call to 1–877–FTC–HELP (1–(877) 382–4357); or by a signed statement setting forth the alleged violation of law with such supporting information as is available, and the name and address of the person or persons complained of, filed with the Office of the Secretary in conformity with § 4.2(d) of this chapter. No forms or formal procedures are required.

(b) The person making the complaint or request is not regarded as a party to any proceeding that might result from the investigation.

(c) Complaints or requests submitted to the Commission may be lodged in a database and made available to federal, state, local, and foreign law enforcement agencies that commit to maintain the privacy and security of the information provided. Further, where a complaint is

[14] In the alternative, the rule provides that the Commission may preside over the matter in the first instance or assign one or more members to sit as administrative law judges in a matter. Under the APA, the Commission or its members have the authority to preside over a hearing. *See* 5 U.S.C. 556(b).

[15] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

by a consumer or consumer representative concerning a specific consumer product or service, the Commission in the course of a referral of the complaint or request, or in furtherance of an investigation, may disclose the identity of the complainant. In referring any such consumer complaint, the Commission specifically retains its right to take such action as it deems appropriate in the public interest and under any of the statutes it administers. With these exceptions, it is the Commission's policy not to publish or divulge the name of a complainant except as authorized by law or by the Commission's rules.

3. Revise § 2.4 to read as follows:

§ 2.4 Investigational policy.

Consistent with obtaining the information, including documentary material, it needs for investigations, the Commission encourages the just and speedy resolution of investigations. The Commission will therefore employ compulsory process when in the public interest. The Commission encourages cooperation in its investigations. In all matters, whether involving compulsory process or voluntary requests for documents and information, the Commission expects all parties to engage in meaningful discussions with staff to prevent confusion or misunderstandings regarding the nature and scope of the information and material being sought, in light of the inherent value of genuinely cooperative discovery.

4. Revise § 2.6 to read as follows:

§ 2.6 Notification of purpose.

Any person, partnership or corporation under investigation compelled or requested to furnish information or documentary material shall be advised of the purpose and scope of the investigation, the nature of the acts or practices under investigation, and the applicable provisions of law. A copy of a Commission resolution, as prescribed under § 2.7(a), shall be sufficient to give persons, partnerships, or corporations notice of the purpose of the investigation. While investigations are generally nonpublic, Commission staff may disclose the existence of an investigation to potential witnesses or other third parties to the extent necessary to advance the investigation.

5. Revise § 2.7 to read as follows:

§ 2.7 Compulsory process in investigations.

(a) *In general.* When the public interest warrants, the Commission may issue a resolution authorizing the use of compulsory process. The Commission or any Commissioner may, pursuant to a Commission resolution, issue a subpoena, or a civil investigative demand, directing the recipient named therein to appear before a designated representative at a specified time and place to testify or to produce documentary material, or both, and in the case of a civil investigative demand, to provide a written report or answers to questions, relating to any matter under investigation by the Commission. For the purposes of this section, the term:

(1) Electronically stored information (''ESI'') means any writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

(2) ''Documentary material'' includes all documents, materials, and information, including ESI, within the meaning of the Federal Rules of Civil Procedure.

(3) ''Compulsory process'' means any subpoena, CID, access order, or order for a report issued by the Commission.

(4) ''Protected status'' refers to information or material that may be withheld from production or disclosure on the grounds of any legal exemption, privilege, or work product protection.

(b) *Civil Investigative Demands.* Civil Investigative Demands (''CIDs'') shall be the only form of compulsory process issued in investigations with respect to unfair or deceptive acts or practices under section 5(a)(1) of the Federal Trade Commission Act (hereinafter referred to as ''unfair or deceptive acts or practices'').

(1) CIDs for the production of documentary material, including ESI, shall describe each class of material to be produced with sufficient definiteness and certainty as to permit such material to be fairly identified, prescribe a return date providing a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction, and identify the Commission's custodian to whom such material shall be made available. Documentary material, including ESI, for which a CID has been issued shall be made available as prescribed in the CID. Such productions shall be made in accordance with the procedures prescribed by section 20(c)(11) of the Federal Trade Commission Act.

(2) CIDs for tangible things, including electronic media, shall describe each class of tangible thing to be produced with sufficient definiteness and certainty as to permit each such thing to be fairly identified, prescribe a return date providing a reasonable period of time within which the things so demanded may be assembled and submitted, and identify the Commission's custodian to whom such things shall be submitted. Submission of tangible things in response to a CID shall be made in accordance with the procedures prescribed by section 20(c)(12) of the Federal Trade Commission Act.

(3) CIDs for written reports or answers to questions shall propound with sufficient definiteness and certainty the reports to be produced or the questions to be answered, prescribe a return date, and identify the Commission's custodian to whom such reports or answers to questions shall be submitted. The submission of written reports or answers to questions in response to a CID shall be made in accordance with the procedures prescribed by section 20(c)(13) of the Federal Trade Commission Act.

(4) CIDs for the giving of oral testimony shall prescribe a date, time, and place at which oral testimony shall commence, and identify the Commission investigator and the Commission custodian. Oral testimony in response to a CID shall be taken in accordance with the procedures set forth in section 20(c)(14) of the Federal Trade Commission Act.

(c) *Subpoenas.* Except in investigations with respect to unfair or deceptive acts or practices, the Commission may require by subpoena the attendance and testimony of witnesses and the production of documentary material relating to any matter under investigation. Subpoenas for the production of documentary material, including ESI, shall describe each class of material to be produced with sufficient definiteness and certainty as to permit such material to be fairly identified, prescribe a return date providing a reasonable period of time for production, and identify the Commission's custodian to whom such material shall be made available. A subpoena may require the attendance of the witness or the production of documentary material at any place in the United States.

(d) *Special reports.* Except in investigations regarding unfair or deceptive acts or practices, the Commission may issue an order requiring a person, partnership, or corporation to file a written report or answers to specific questions relating to any matter under investigation, study or

survey, or under any of the Commission's reporting programs.

(e) *Commission orders requiring access.* Except in investigations regarding unfair or deceptive acts or practices, the Commission may issue an order requiring any person, partnership, or corporation under investigation to grant access to their files, including electronic media, for the purpose of examination and to make copies.

(f) *Investigational hearings.*

(1) Investigational hearings may be conducted in the course of any investigation undertaken by the Commission, including rulemaking proceedings under subpart B of part 1 of this chapter, inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Commission or to monitor performance under and compliance with a decree entered in suits brought by the United States under the antitrust laws, the development of facts in cases referred by the courts to the Commission as a master in chancery, and investigations made under section 5 of the Webb-Pomerene (Export Trade) Act.

(2) Investigational hearings shall be conducted by one or more of any Commission member, examiner, attorney, investigator, or other person duly designated under the Federal Trade Commission Act, for the purpose of hearing the testimony of witnesses and receiving documents and information relating to any subject under investigation. Such hearings shall be under oath or affirmation, stenographically recorded, and the transcript made a part of the record of the investigation. The Commission may, in addition, employ other means to record the hearing.

(3) Unless otherwise ordered by the Commission, investigational hearings shall not be public. For investigational hearings conducted pursuant to a CID for the giving of oral testimony, the Commission Investigator shall exclude from the hearing room all persons other than the person being examined, counsel for the person being examined, and any stenographer or other person recording such testimony. A copy of the transcript shall promptly be forwarded by the Commission Investigator to the Commission custodian designated under § 2.16. At the discretion of the Commission Investigator, and with the consent of the person being examined (or, in the case of an entity, its counsel), persons other than Commission staff, court reporters, and Commission Investigator may be present in the hearing room.

(g) *Depositions.* Except in investigations with respect to unfair or deceptive acts or practices, the Commission may order by subpoena a deposition pursuant to section 9 of the Federal Trade Commission Act, of any person, partnership, or corporation, at any stage of an investigation. The deposition shall take place upon notice to the subjects of the investigation, and the examination and cross-examination may proceed as they would at trial. Depositions shall be conducted by a Commission Investigator, for the purpose of hearing the testimony of witnesses and receiving documents and information relating to any subject under investigation. Depositions shall be under oath or affirmation, stenographically recorded, and the transcript made a part of the record of the investigation. The Commission may, in addition, employ other means to record the deposition.

(h) *Testimony from an entity.* Where Commission compulsory process requires oral testimony from an entity, the compulsory process shall describe with reasonable particularity the matters for examination and the entity must designate one or more officers, directors, or managing agents, or designate other persons who consent, to testify on its behalf. Unless a single individual is designated by the entity, the entity must designate in advance and in writing the matters on which each designee will testify. The persons designated must testify about information known or reasonably available to the entity and their testimony shall be binding upon the entity.

(i) *Inspection, copying, testing, and sampling of documentary material, including electronic media.* The Commission, through compulsory process, may require the production of documentary material, or electronic media or other tangible things, for inspection, copying, testing, or sampling.

(j) *Manner and form of production of ESI.* When Commission compulsory process requires the production of ESI, it shall be produced in accordance with the instructions provided by Commission staff regarding the manner and form of production. All instructions shall be followed by the recipient of the process absent written permission to the contrary from a Commission official identified in § 2.7(*l*). Absent any instructions as to the form for producing ESI, ESI must be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form.

(k) *Mandatory pre-petition meet and confer process.* Unless excused in writing by a Commission official identified in § 2.7(*l*), a recipient of Commission compulsory process shall meet and confer with Commission staff within 10 days after receipt of process or before the deadline for filing a petition to quash, whichever is first, to discuss compliance and to address and attempt to resolve all issues, including privilege issues and the form and manner in which privilege claims will be asserted. Such meetings may be in person or by telephone. The recipient must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with compulsory process. Such personnel could include individuals knowledgeable about the recipient's information or records management systems, and/or other relevant materials such as organizational charts and samples of material required to be produced. If any issues relate to ESI, the recipient shall have a person familiar with its ESI systems and methods of retrieval participate in the meeting. The Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and will consider only issues raised during the meet and confer process.

(l) *Delegations regarding CIDs and subpoenas.* The Directors of the Bureau of Competition, Consumer Protection, or Economics, their Deputy Directors, the Assistant Directors of the Bureaus of Competition and Economics, the Associate Directors of the Bureau of Consumer Protection, the Regional Directors, and the Assistant Regional Directors are all authorized to negotiate and, in writing, approve the terms of compliance with all compulsory process, including subpoenas, CIDs, reporting programs, orders requiring reports, answers to questions, and orders requiring access. If a recipient of compulsory process has demonstrated satisfactory progress toward compliance, a Commission official identified in this paragraph may, at his or her discretion, extend the time for compliance with Commission compulsory process. The subpoena power conferred by section 329 of the Energy Policy and Conservation Act (42 U.S.C. 6299) and section 5 of the Webb-Pomerene (Export Trade) Act (15 U.S.C. 65) are specifically included within this delegation of authority.

6. Reserve § 2.8.

7. Remove § 2.8A.

8. Revise § 2.9 to read as follows:

§ 2.9 Rights of witnesses in investigations.

(a) Any person compelled to submit data to the Commission or to testify in

a deposition or investigational hearing shall be entitled to retain a copy or, on payment of lawfully prescribed costs, procure a copy of any document submitted, and of any testimony as stenographically recorded, except that in a nonpublic hearing the witness may for good cause be limited to inspection of the official transcript of the testimony. Upon completion of transcription of the testimony, the witness shall be offered an opportunity to read the transcript. Any changes by the witness shall be entered and identified upon the transcript by the Commission Investigator, together with a statement of the reasons given by the witness for requesting such changes. After the changes are entered, the transcript shall be signed by the witness unless the witness cannot be found, is ill and unavailable, waives in writing his or her right to sign, or refuses to sign. If the transcript is not signed by the witness within 30 days of having been afforded a reasonable opportunity to review it, the Commission Investigator shall take the actions prescribed by section 20(c)(14)(E)(ii) of the Federal Trade Commission Act.

(b) Any witness compelled to appear in person in a deposition or investigational hearing may be accompanied, represented, and advised by counsel, as follows:

(1) In depositions or investigational hearings conducted pursuant to section 9 of the Federal Trade Commission Act, counsel may not consult with the witness while a question directed to a witness is pending, except with respect to issues of privilege involving protected status.

(2) Any objection during a deposition or investigational hearing shall be stated concisely on the record in a nonargumentative and nonsuggestive manner. Neither the witness nor counsel shall otherwise object or refuse to answer any question. Following an objection, the examination shall proceed and the testimony shall be taken, except for testimony requiring the witness to divulge information protected by the claim of privilege or work product. Counsel may instruct a witness not to answer only when necessary to preserve a claim of privilege or work product.

(3) The Commission Investigator may elect to recess the deposition or investigational hearing and reconvene the deposition or hearing at a later date to continue a course of inquiry interrupted by any objection made under paragraph (b)(1) or (b)(2). The Commission Investigator shall provide written notice of the date of the reconvened deposition or hearing to the witness, which may be in the form of an email or facsimile. Failure to reappear or to file a petition to limit or quash in accordance with § 2.10 shall constitute noncompliance with Commission compulsory process for the purposes of a Commission enforcement action under § 2.13 of this part.

(4) In depositions or investigational hearings, immediately following the examination of a witness by the Commission Investigator, the witness or his or her counsel may on the record request that the Commission Investigator permit the witness to clarify any answers. The grant or denial of such request shall be within the discretion of the Commission Investigator and would ordinarily be granted except for good cause stated and explained on the record, and with an opportunity for counsel to undertake to correct the expressed concerns of the Commission Investigator or otherwise to reply.

(5) The Commission Investigator shall conduct the deposition or investigational hearing in a manner that avoids unnecessary delay, and prevents and restrains disorderly or obstructionist conduct. The Commission Investigator shall, where appropriate, report pursuant to § 4.1(e) of this chapter any instance where an attorney, in the course of the deposition or hearing, has allegedly refused to comply with his or her directions, or has allegedly engaged in conduct addressed in § 4.1(e). The Commission may take any action as circumstances may warrant under § 4.1(e) of this chapter.

9. Revise § 2.10 to read as follows:

§ 2.10 Petitions to limit or quash Commission compulsory process.

(a) *In general.*

(1) Any petition to limit or quash any compulsory process shall be filed with the Secretary within 20 days after service of the Commission compulsory process or, if the return date is less than 20 days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the Commission compulsory process, including all appropriate arguments, affidavits, and other supporting documentation. Such petition shall not exceed 3,750 words, including all headings, footnotes, and quotations, but excluding the cover, table of contents, table of authorities, glossaries, copies of the compulsory process order or excerpts thereof, appendices containing only sections of statutes or regulations, the statement required by paragraph (a)(2), and affidavits and other supporting documentation. Petitions to limit or quash that fail to comply with these provisions shall be rejected by the Secretary pursuant to § 4.2(g) of this chapter.

(2) Statement. Each petition filed pursuant to paragraph (a)(1) shall be accompanied by a signed separate statement representing that counsel for the petitioner has conferred with counsel for the Commission pursuant to § 2.7(k) in an effort in good faith to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement. If some of the issues in controversy have been resolved by agreement, the statement shall specify the issues so resolved and the issues remaining unresolved. The statement shall recite the date, time, and place of each conference between counsel, and the names of all parties participating in each such conference. Failure to include the required statement may result in a denial of the petition.

(3) Reconvened investigational hearings or depositions. If the Commission Investigator elects pursuant to § 2.9(b)(3) to recess the hearing or deposition and reconvene it at a later date, the witness compelled to reappear may challenge the reconvening by filing with the Secretary a petition to limit or quash the reconvening of the hearing or deposition. Such petition shall be filed within 5 days after receiving written notice of the reconvened hearing; shall set forth all assertions of privilege or other factual and legal objections to the reconvening of the hearing or deposition, including all appropriate arguments, affidavits, and other supporting documentation; and shall be subject to the word count limit in paragraph (a)(1). Except for good cause shown, the Commission will not consider issues presented and ruled upon in any earlier petition filed by or on behalf of the witness.

(4) Staff reply. Commission staff may, without serving the petitioner, provide the Commission a statement that shall set forth any factual and legal response to the petition to limit or quash.

(5) Extensions of time. The Directors of the Bureaus of Competition, Consumer Protection, and Economics, their Deputy Directors, the Assistant Directors of the Bureaus of Competition and Economics, the Associate Directors of the Bureau of Consumer Protection, the Regional Directors, and the Assistant Regional Directors are delegated, without power of redelegation, the authority to rule upon requests for extensions of time within which to file petitions to limit or quash Commission compulsory process.

(b) *Stay of compliance period.* The timely filing of a petition to limit or quash any Commission compulsory

process shall stay the amount of time permitted for compliance with the portion challenged. If the petition is denied in whole or in part, the ruling by the Commission shall specify new terms for compliance, including a new return date, for the Commission's compulsory process.

(c) *Disposition and review.* The Commission will issue an order ruling on a petition to limit or quash within 30 days after the petition is filed with the Secretary. The order may be served on the petitioner via email, facsimile, or any other method reasonably calculated to provide notice to the petitioner of the order.

(d) *Public disclosure.* All petitions to limit or quash Commission compulsory process and all Commission orders in response to those petitions shall become part of the public records of the Commission, except for information granted confidential treatment under § 4.9(c) of this chapter.

10. Revise § 2.11 to read as follows:

§ 2.11 Withholding requested material.

(a) Any person withholding information or material responsive to an investigational subpoena, CID, access order, or order to file a report issued pursuant to § 2.7, or any other request for production of material issued under this part, shall assert a claim of protected status not later than the date set for the production of the material. The claim of privilege, work product, or protected status by operation of law shall include a detailed log of the items withheld, which shall be attested by the lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert a claim of privilege or protected status. All responsive material that is neither privileged, work product, nor in a protected status by operation of law, including all attachments, that contain privileged or protected information shall be produced only to the extent necessary to preserve any claim of protected status. The information provided in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim of privilege, work product, or protected status by operation of law without disclosing the privileged or protected information. The failure to provide information sufficient to support a claim of privilege or protection may result in a denial of the claim of privilege or protection. The log shall provide:

(1) The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);

(2) A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;

(3) The date the material was created or prepared;

(4) The date the material was sent to each recipient (if different from the date the material was created or prepared);

(5) The names, titles, physical addresses, email addresses, and organizations of all authors (if not contained in the disclosed material);

(6) The names, titles, physical addresses, email addresses, and organizations of all recipients of the material (if not contained in the disclosed material);

(7) The factual basis supporting the claim that the material is privileged, work product, or protected by operation of law (for example, that it was prepared by an attorney rendering legal advice to a client in an attorney-client privileged communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim of work product);

(8) The number of pages (if the withheld material is a document) or the number of bytes (if the withheld material is in electronic form); and

(9) Any other pertinent information necessary to support the assertion of privilege, work product, or protected status by operation of law.

(b) A person withholding responsive material solely for the reasons described in paragraph (a) shall meet and confer with Commission staff pursuant to § 2.7(k) to discuss and attempt to resolve any issues associated with the manner and form in which privilege or protection claims will be asserted. The participants in the meet and confer session may agree to modify the logging requirements set forth in paragraph (a). The Commission may challenge the validity of any privilege or protection claim for responsive material by initiating a judicial enforcement proceeding.

(c) Unless otherwise provided in the instructions accompanying the compulsory process, and except for information or material subject to a valid claim of privilege or protection, all responsive information and material shall be produced without redaction.

(d)(1)(A) The disclosure of material protected by the attorney-client privilege or as work product shall not operate as a waiver if:

(i) The disclosure is inadvertent;

(ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(iii) The holder promptly took reasonable steps to rectify the error, including notifying Commission staff of the claim and the basis for it.

(B) After being so notified, Commission must:

(i) Promptly return or destroy the specified material and any copies, not use or disclose the material until any dispute as to the validity of the claim is resolved; and take reasonable measures to retrieve the material from all persons to whom it was disclosed before being notified; or

(ii) Sequester such material until such time as an Administrative Law Judge or court may rule on the merits of the claim of privilege or protection in a proceeding or action resulting from the investigation.

(C) The producing party must preserve the material until the claim of privilege or protection is resolved, the investigation is closed, or any enforcement proceeding is concluded.

(2) When a disclosure is made that waives attorney-client privilege or work product, the waiver extends to an undisclosed communication or information only if:

(A) The waiver is intentional;

(B) The disclosed and undisclosed information or material concern the same subject matter; and

(C) They ought in fairness to be considered together.

11. Reserve § 2.12.

12. Revise § 2.13 to read as follows:

§ 2.13 Noncompliance with compulsory processes.

(a) In cases of failure to comply with Commission compulsory processes, appropriate action may be initiated by the Commission or the Attorney General, including actions for enforcement, forfeiture, civil penalties, or criminal sanctions. The Commission may also take any action as the circumstances may warrant under § 4.1(e) of this chapter.

(b) The General Counsel, pursuant to delegation of authority by the Commission, without power of redelegation, is authorized, when he or she deems appropriate:

(1) To initiate, on behalf of the Commission, an enforcement proceeding in connection with the failure or refusal of a recipient to comply with, or to obey, a subpoena, a CID, or an access order, if the return date or any extension thereof has passed;

(2) To approve and have prepared and issued, in the name of the Commission, a notice of default in connection with the failure of a recipient of an order to file a report pursuant to section 6(b) of the Federal Trade Commission Act to timely file that report, if the return date

or any extension thereof has passed; to initiate, on behalf of the Commission, an enforcement proceeding; or to request to the Attorney General, on behalf of the Commission, to initiate a civil action in connection with the failure of such recipient to timely file a report, when the return date or any extension thereof has passed;

(3) To initiate, on behalf of the Commission, an enforcement proceeding in a United States District Court under section 7A(g)(2) of the Clayton Act (15 U.S.C. 18a(g)(2)); and

(4) To seek an order of civil contempt in cases where a court order enforcing compulsory process has been violated.

13. Revise § 2.14 to read as follows:

§ 2.14 Disposition.

(a) When an investigation indicates that corrective action is warranted, and the matter is not subject to a consent settlement pursuant to subpart C of this part, the Commission may initiate further proceedings.

(b) When corrective action is not necessary or warranted in the public interest, the investigation shall be closed. The matter may nevertheless be further investigated at any time if circumstances so warrant.

(c) In matters in which a recipient of an access letter or Commission compulsory process has not been notified that an investigation has been closed or otherwise concluded, after a period of twelve months following the last written communication from the Commission staff to the recipient or the recipient's counsel, the recipient is relieved of any obligation to continue preserving information, documentary material, or evidence, for purposes of responding to the Commission's process or the staff's access letter. The ''written communication'' may be in the form of a letter, an email, or a facsimile sent by the Commission or Commission staff to the recipient or his or her counsel.

(d) The Commission has delegated to the Directors of the Bureaus of Competition and Consumer Protection, their Deputy Directors, the Assistant Directors of the Bureau of Competition, the Associate Directors of the Bureau of Consumer Protection, and the Regional Directors, without power of redelegation, limited authority to close investigations.

PART 4—MISCELLANEOUS RULES

14. The authority citation for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

15. Amend § 4.1 by revising paragraph (e) to read as follows:

* * * * *

(e) *Reprimand, suspension, or disbarment of attorneys.*

(1) The following provisions govern procedures for evaluating allegations of misconduct by attorneys practicing before the Commission who are not employed by the Commission.[1] The Commission may publicly reprimand, suspend, or disbar from practice before the Commission any such person who has practiced, is practicing, or holds himself or herself out as entitled to practice before the Commission if it finds that such person:

(i) Does not possess the qualifications required by § 4.1(a);

(ii) Has failed to conform to standards of ethical conduct required of practitioners at the bar of any court of which he or she is a member;

(iii) Has engaged in obstructionist, contemptuous, or unprofessional conduct during the course of any Commission proceeding or investigation; or

(iv) Has knowingly or recklessly given false or misleading information, or has knowingly or recklessly participated in the giving of false information to the Commission or any officer or employee of the Commission.[2]

An attorney may be responsible for another attorney's violation of this § 4.1(e) if the attorney orders, or with knowledge of the specific conduct, ratifies the conduct involved, or is a partner or has comparable managerial authority in the law firm in which the other attorney practices, or has direct supervisory authority over the other attorney, and knew of the conduct at a time when its consequences could have been avoided or mitigated but failed to take reasonable remedial action.

(2) Allegations of attorney misconduct in violation of paragraph (e)(1) of this subsection may be proffered by any person possessing information concerning the alleged misconduct. Any such allegations may be submitted orally or in writing to the Bureau Director, the Deputy Director if the Director is not available, or to any of their designees, of the Bureau or office responsible for the matter about which the allegations are made (''Bureau Officer'').

(3) After review and evaluation of the allegations, any supporting materials, and any additional information that the Bureau Officer may acquire, the Bureau Officer, if he or she deems it appropriate, shall in writing notify the subject of the complaint of the underlying allegations and potential sanctions available to the Commission under this subsection, and provide him or her an opportunity to respond to the allegations and provide additional relevant information and material. The Bureau Officer may request that the Commission issue a resolution authorizing the use of compulsory process, and may thereafter initiate the service of compulsory process, to assist in obtaining information for the purpose of making a recommendation to the Commission whether further action may be warranted.

(4) If the Bureau Officer, after review and evaluation of the allegations, supporting material, response by the subject of the allegations, if any, and all additional available information and material, determines that no further action is warranted, he or she may close the matter if the Commission has not issued a resolution authorizing the use of compulsory process. In the event the Bureau Officer determines that further Commission action may be warranted, or if the Commission has issued a resolution authorizing the use of compulsory process, he or she shall make a recommendation to the Commission. The recommendation shall include all relevant information and material as to whether further Commission action, or any other disposition of the matter, may be warranted.

(5) If the Commission has good cause to believe, after review of the Bureau Officer's recommendation, that an attorney has engaged in professional misconduct of the type described in paragraph (e)(1), the Commission may institute administrative disciplinary proceedings proposing public reprimand, suspension, or disbarment of the attorney from practice before the Commission. Except as provided in paragraph (e)(8) of this subsection, administrative disciplinary proceedings shall be handled in accordance with the following procedures:

(i) The Commission shall serve the respondent attorney with an order to show cause why the Commission should not impose sanctions against the attorney. The order to show cause shall specify the alleged misconduct at issue and the possible sanctions. Within 14 days of service of the order to show

[1] The standards of conduct and disciplinary procedures under this § 4.1(e) apply only to outside attorneys practicing before the Commission and not to Commission staff. Allegations of misconduct by Commission employees will be handled pursuant to procedures for employee discipline or pursuant to investigations by the Office of Inspector General.

[2] For purposes of this rule, knowingly giving false or misleading information includes knowingly omitting material facts necessary to make any oral or written statements not misleading in light of the circumstances under which they were made.

cause, the respondent may file a response admitting or denying the allegations of misconduct, and may request a hearing. If no response is filed, the allegations shall be deemed admitted.

(ii) The Commission may assign the matter for further proceedings to be presided over by an Administrative Law Judge or by the Commission or one or more members of the Commission sitting as Administrative Law Judges. The Administrative Law Judge or the Commission if it reviews the matter in the first instance shall rule on any request for a hearing.

(iii) Commission counsel shall be appointed by the Bureau Officer to prosecute the allegations of misconduct in any administrative disciplinary proceedings instituted pursuant to this rule.

(iv) To the extent appropriate, practicable, and consistent with the Commission's policy of conducting proceedings expeditiously, the Administrative Law Judge or the Commission may issue orders (1) authorizing the filing of pleadings in accordance with subpart B of Part 3 of the Commission's rules; (2) specifying the available prehearing procedures in accordance with subpart C of Part 3 of the Commission's rules, (3) authorizing discovery to whatever extent deemed appropriate, but no more than what is provided for in proceedings held under subpart D of Part 3 of the Commission's rules; (4) conducting and controlling administrative proceedings in accordance with subpart E of Part 3 of the Commission's rules; and (5) providing for the opportunity to be heard, the receipt into evidence of documentary material, and the taking of testimony at a hearing. The time periods specified in subparts B, C, D, and E of Part 3 of the Commission's rules with respect to pleadings, prehearing procedures, discovery, and hearings shall not apply to administrative disciplinary proceedings. Instead, all time periods and deadlines shall be determined by the Administrative Law Judge or the Commission consistent with the Commission's interest in an expeditious proceeding and fairness to the attorney respondent.

(v) In its order to show cause, the Commission will establish a deadline for an initial decision by the Administrative Law Judge or by the Commission if it reviews the matter in the first instance. The deadline shall not be modified by the Administrative Law Judge except that it may be amended by leave of the Commission.

(vi) After completing a review of the allegations of misconduct, the response of the respondent attorney, if any, and the entirety of the record of administrative proceedings, the Administrative Law Judge or the Commission if it reviews the matter in the first instance shall issue an initial decision either dismissing the allegations or, if it is determined that the allegations are supported by a preponderance of the evidence, specify an appropriate sanction. An Administrative Law Judge's initial decision may be appealed to the Commission by either party within 30 days. If the Administrative Law Judge's initial decision is appealed, the Commission will thereafter issue a scheduling order governing the appeal.

(vii) Any administrative hearing on the order to show cause, and any oral argument on appeal, shall be open to the public unless otherwise ordered for good cause by the Commission or the Administrative Law Judge.

(6) Notwithstanding the administrative disciplinary proceedings described in paragraph (e)(5) of this subsection, if after completing a review of the Bureau Officer's recommendation, the response of the attorney, if any, and the entirety of the record before it, the Commission determines that an attorney has engaged in professional misconduct of the type described in paragraph (e)(1) of this subsection, the Commission may issue a public reprimand without resort to the procedures specified in paragraph (e)(5).

(7) Regardless of any action or determination the Commission may or may not make, the Commission may direct the General Counsel to refer the allegations of misconduct to the appropriate state, territory, or District of Columbia bar or any other appropriate authority for further action.

(8) Upon receipt of notification from any authority having power to suspend or disbar an attorney from the practice of law within any state, territory, or the District of Columbia, demonstrating that an attorney practicing before the Commission is subject to an order of final suspension (not merely temporary suspension pending further action) or disbarment by such authority, the Commission may, without resort to any of the procedures described in this subsection, enter an order temporarily suspending the attorney from practice before it and directing the attorney to show cause within 30 days from the date of said order why the Commission should not impose further discipline against the attorney. If no response is filed, the attorney will be deemed to have acceded to such further discipline as the Commission deems appropriate. If a response is received, the Commission may take action or initiate proceedings consistent with paragraphs (e)(5) or (e)(6) of this subsection before making a determination whether, and to what extent, to impose further discipline against the attorney.

(9) The disciplinary process described in this subsection is in addition to, and does not supersede, the authority of the Commission or an Administrative Law Judge to discipline attorneys participating in Part 3 proceedings pursuant to §§ 3.24(b)(2) or 3.42(d).

By direction of the Commission, Commissioner Rosch dissenting.

Donald S. Clark,

Secretary.

Concurring and Dissenting Statement of Commissioner J. Thomas Rosch Regarding Proposed Revisions to the Part 2 Rules and Rule 4.1(e)

January 13, 2012

The Commission announced today that it will publish a notice in the Federal Register proposing revisions to the FTC's Rules of Practice. I support the Commission's efforts to modernize our operating rules and generally agree with the changes proposed today. I nevertheless dissent from the proposed rule changes insofar as they omit two important reforms: mandatory compulsory process in all full-phase investigations and regular reports on the status of pending investigations to all Commissioners.

A thorough investigation requires the use of compulsory process. This is particularly true for investigations involving competition concerns. Targets cannot be expected to provide incriminatory information in response to access letters, which are not judicially enforceable. Likewise, third parties cannot be expected to provide candid information unless they are given the ''cover'' from a target's retaliation that compulsory process provides. Only through the use of mandatory compulsory process at the outset of all full-phase competition investigations can the Commission be assured of having a thorough and complete record when making enforcement decisions.

Another needed reform to our Rules of Practice is requiring regular reports on the status of pending investigations to all Commissioners, not just the Chairman. Notwithstanding the laudable efforts of our current Chairman, the Commission has not always been kept apprised of the status of pending investigations, particularly those languishing for a lengthy period of time. The current Chairman will not be in his position forever so leaving the

decision up to whoever is the Chairman about whether and when to brief other Commissioners does not solve the problem. Requiring regular reports to all Commissioners for investigations lasting longer than six months will inspire public confidence and help avoid undue delays in completing investigations.

[FR Doc. 2012–985 Filed 1–20–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157714–06]

RIN 1545–BG43

Determination of Governmental Plan Status

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document announces a public hearing on proposed regulations, (REG–157714–06) relating to the determination of governmental plans.

DATES: The public hearing is scheduled for Tuesday, June 5, 2012, at 10 a.m. in the auditorium of the Internal Revenue Building. The IRS must receive outlines of the topics to be discussed at the public hearing by February 6, 2012.

ADDRESSES: The public hearing is being held in the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to CC:PA:LPD:PR (REG–157714–06), Room 5205, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–157714–06), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–157714–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the advanced notice of proposed rulemaking (REG–157714–06) that was published in the **Federal Register** on Tuesday, November 8, 2011 (76 FR 69172).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline has passed, persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and four copies) by February 6, 2012.

The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publications and Regulations Br., Procedure and Administration.

[FR Doc. 2012–1253 Filed 1–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120282–10]

RIN 1545–BJ56

Dividend Equivalents From Sources Within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the definition of the term ''specified notional principal contract'' for purposes of section 871(m) of the Internal Revenue Code (Code) beginning after March 18, 2012 through December 31, 2012. The text of those regulations also serves as the text of the proposed regulations. The preamble to the temporary regulations explains the amendments added by the temporary regulations. The preamble to this notice of proposed rulemaking explains the proposed regulations, which provide guidance to nonresident aliens and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to payments of dividends from sources within the United States. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 6, 2012. Outlines of topics to be discussed at the public hearing scheduled for April 27, 2012, at 10 a.m., must be received by April 6, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120282–10), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–120282–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–120282–10). The public hearing will be held in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mark E. Erwin or D. Peter Merkel at (202) 622–3870; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, Publications and Regulations Branch Specialist, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 871. The temporary regulations extend the section 871(m)(3)(A) statutory definition of the term specified notional principal contract (specified NPC) through December 31, 2012. This document contains proposed regulations under section 871(m) of the Code that will be applicable as of January 1, 2013. The preamble to the temporary regulations provides a discussion of the background of section 871(m) and explains the provisions contained in the temporary

regulations and § 1.871–16(b) of these proposed regulations.

1. In General

Section 1.871–15(a) of these proposed regulations treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. As prescribed by section 871(m)(2), § 1.871–15(b)(1) defines a dividend equivalent as (1) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that is contingent upon or determined by reference to the payment of a dividend from sources within the United States, (2) any payment made pursuant to a specified NPC that is contingent upon or determined by reference to the payment of a dividend from sources within the United States, or (3) any other payment substantially similar to such payments. The proposed regulations specify that a payment is not a dividend equivalent if it is determined by reference to an estimate of an expected (but not yet announced) dividend without reference to or adjustment for the amount of any actual dividend.

For purposes of determining a dividend equivalent, the term *payment* includes any gross amount used in computing any net amount transferred to or from the taxpayer. For example, the terms of a notional principal contract (NPC) may provide for periodic payments by each of the counterparties that occur at quarterly intervals. Because these payments may offset each other, in whole or in part, the terms of such contracts generally provide for payment of only the net amount owed between the counterparties (that is, the difference between the amounts owed between the counterparties). A dividend equivalent is equal to the gross amount that is contingent upon or determined by reference to a dividend used to determine a net amount, even if no net payment is made or the party entitled to a gross amount determined by reference to a dividend is required to make a net payment to the other contracting party.

Section 1.871–15(d) describes payments that are considered substantially similar to substitute dividends made pursuant to securities lending and sale-repurchase transactions and to payments made pursuant to specified NPCs. Substantially similar payments are (1) gross-up amounts paid by a short party in satisfaction of the long party's tax liability with respect to a dividend equivalent, and (2) payments calculated by reference to a dividend from sources within the United States that are made pursuant to an equity-linked instrument other than an NPC. The Treasury Department and the IRS will continue to monitor equity-linked transactions, and may identify in separate guidance other payments that are substantially similar to a substitute dividend payment or a payment made pursuant to a specified NPC.

2. Definition of Specified Notional Principal Contract

Section 1.871–16 defines the term specified NPC for payments made after March 18, 2012. Comments requested that rules promulgated under section 871(m) rely on objective factors for determining whether an NPC is a specified NPC. The Treasury Department and the IRS believe that the proposed regulations address these requests by providing objective rules that will be administrable and that identify NPCs entered into with the potential for tax avoidance.

A. Transition Period

To provide taxpayers with the time needed to implement withholding on specified NPCs, temporary regulations issued together with these proposed regulations provide that the term specified NPC will have the same meaning as provided in section 871(m)(3)(A) for payments made prior to January 1, 2013. Section 1.871–16(b) is the same as the temporary regulations accompanying this notice of proposed rulemaking. Thus, § 1.871–16T(b) applies to payments made on or after March 18, 2012 and before January 1, 2013.

B. Definition Applicable to Payments Made on or After January 1, 2013

Beginning on January 1, 2013, an NPC generally will be a specified NPC for purposes of section 871(m) if: (1) The long party is ''in the market'' on the same day that the parties price the NPC or when the NPC terminates; (2) the underlying security is not regularly traded on a qualified exchange; (3) the short party posts the underlying security as collateral and the underlying security represents more than ten percent of the collateral posted by the short party; (4) the term of the NPC has fewer than 90 days; (5) the long party controls the short party's hedge; (6) the notional principal amount is greater than five percent of the total public float of the underlying security or greater than 20 percent of the 30-day daily average trading volume, as determined at the close of business on the day immediately preceding the first day of the term of the NPC; or (7) the NPC is entered into on or after the announcement of a special dividend and prior to the ex-dividend date.

A long party is considered to be ''in the market'' if the long party sells the underlying security on the same day that the parties price an NPC or purchases the underlying security on the day that the parties terminate an NPC. An NPC is sometimes entered into in tranches that spread the execution over more than one day; in that case, the proposed regulations consider each day that a tranche is executed or settled as a testing date. Similarly, if the long party to an NPC sells or purchases an underlying security on a day other than the pricing date or the settlement date of an NPC, but sets the price to align with the price of the NPC (such as with a forward contract), the long party will be treated as in the market on that day.

The Code and regulations define ''readily tradable on an established securities market'' (and similar phrases) differently depending on the context. The Treasury Department and the IRS believe that ''readily tradable on an established securities market,'' as used in section 871(m), is intended to ensure that the underlying securities trade in sufficient volume to provide ample liquidity in the position. The proposed regulations provide that if the underlying security is not regularly traded on a qualified exchange, an NPC referencing that security is a specified NPC. An underlying security is ''regularly traded'' for this purpose if it is traded on a qualified exchange and it was traded on at least 15 out of the 30 trading days prior to the date that the parties entered into an NPC.

Section 871(m)(3)(A)(iv) provides that prior to March 18, 2012, an NPC will be a specified NPC if the short party to the contract posts the underlying security as collateral with any long party to the contract. The Treasury Department and the IRS believe that when a short party posts the underlying security as collateral with the long party the related NPC should be a specified NPC. In the event of default by the short party, the fact that the underlying security is posted as collateral guarantees that the value of the collateral moves in tandem with the contract. This concern is less applicable when the value of the underlying securities posted as collateral is a small portion of the total amount of cash or other property posted as collateral for the NPC. The proposed regulations treat an NPC as a specified NPC only if the underlying security is posted as collateral and the underlying security represents more than ten percent of the total fair market value

posted as collateral on any day that the NPC is in effect.

The proposed regulations treat an NPC as a specified NPC if the term of the contract has fewer than 90 days. As the market for equity-linked NPCs grew and evolved, taxpayers began to purchase and sell NPCs in lieu of trading the underlying equities. Many transactions entered into to avoid U.S. withholding tax on dividends involved short-term equity swaps around an ex-dividend date. In many cases, the taxpayer entered into an NPC with a financial institution that acquired the underlying security as a hedge of a contract; the parties then settled or terminated that contract within days or weeks of the date it was entered into. When an NPC has a short duration and is in effect over an ex-dividend date, the source rule of section 871(m) should take precedence over the general source rule for NPC income in § 1.863–7.

In some situations, the long party controls the acquisition of stock that the short party uses to hedge its position under the contract or has directed the short party to sell the short party's hedge to a particular purchaser at a specific price and date. The long party in these situations may exercise such control over the short party's hedge pursuant to terms of a written agreement or through course of conduct. The Treasury Department and the IRS believe that the source rule of section 871(m) should apply to an NPC when a long party exercises control over the short party's hedge. Accordingly, the proposed regulations treat an NPC as a specified NPC when a foreign investor controls the short party's hedge or participates in an underlying equity control program. An underlying equity control program is any system, whether carried out electronically or otherwise, that allows a long party to direct its counterparty's hedge of an NPC or that allows a long party to acquire economic exposure to an underlying security and to determine the form of the transaction later. An underlying equity control program, however, does not include an electronic trading platform that allows a customer to place an order to enter into an NPC with a dealer, provided that the dealer independently determines whether and how to hedge its position without customer direction.

The proposed regulations treat an equity swap as a specified NPC when the notional principal amount of an NPC is a significant percentage of the trading volume. Specifically, when the notional principal amount of the NPC is greater than five percent of the total public float or 20 percent of the 30-day average daily trading volume such contract is treated as a specified NPC. If a long party has multiple NPCs that reference the same underlying security, the notional principal amounts of those contracts must be aggregated when determining whether the notional principal amount represents a significant percentage of the trading volume.

A special dividend is a nonrecurring payment to shareholders that is in addition to any recurring dividend payment. The proposed regulations provide that any NPC is a specified NPC when the parties enter into the NPC after the announcement of a special dividend on the underlying stock. The Treasury Department and the IRS believe that an NPC entered into after the announcement of a special dividend and before the ex-dividend date is more likely to be entered into for the purpose of avoiding U.S. tax than an NPC referencing a stock that pays only a recurring dividend.

To prevent taxpayers from avoiding these rules through related parties, the proposed regulations provide that each related person (within the meaning of section 267(b) or 707(b)(1)) is treated as a party to the contract. The proposed regulations also provide that an NPC entered into between two related dealers is not a specified NPC if the NPC hedges risk associated with another NPC entered into with a third party. This rule is intended to avoid excessive withholding tax on transactions commonly employed by dealers to transfer risk from one entity to another within their affiliated group.

Notwithstanding these rules defining the term specified NPC, the Commissioner may challenge transactions that are designed to avoid the application of these rules under applicable judicial doctrines. Nothing in these rules precludes the Commissioner from asserting that a contract labeled as an NPC or other equity derivative is in fact an ownership interest in the equity referenced in the contract.

3. Underlying Security

The term *underlying security* means any security that pays a U.S. source dividend. If an NPC references more than one security, each reference security is treated as an underlying security of a separate NPC. If an NPC references a customized index, each component security of that index is treated as an underlying security in a separate NPC for purposes of this section. An index is treated as a customized index if it is (1) a narrow-based index or (2) any other index unless futures contracts or options contracts referencing the index trade on a qualified board or exchange. The definition of the ''narrow-based index'' is generally based on the definition of that term in the Securities Exchange Act of 1934, Section 3(a)(55)(B).

4. Specified NPC Status Arising During Term of Contract; Liability of Withholding Agent; and Other Conforming Amendments

These proposed regulations amend several regulations under section 1441 to require a withholding agent to withhold tax owed with respect to a dividend equivalent. If an NPC that is not a specified NPC on the date it is entered into becomes a specified NPC during the term of the contract, it will be treated as though it had been a specified NPC during the entire term of the contract. Payments made under the NPC by reference to the payment of a dividend from sources within the United States will be re-characterized as dividend equivalents and all tax owed with respect to such dividend equivalents will be due at the time of the next payment made under the NPC, including a termination payment. In cases where the tax owed is greater than the next payment made under the specified NPC, the withholding agent is responsible for reporting and depositing the total amount due with the IRS. The mechanism by which a withholding agent collects the amount due from the taxpayer is left to the discretion of the withholding agent and the taxpayer, and is not specified in these proposed regulations. The withholding agent must deposit the total amount due even if it cannot collect the amount from the counterparty.

The proposed regulations provide that dividend equivalents are treated as income from investments in stock for purposes of section 892; taxpayers may rely on § 1.892–3(a)(6) until final regulations are issued. Finally, the proposed regulations provide that a reduced rate of withholding tax provided by an income tax convention for dividends paid or derived by a foreign person applies to a dividend equivalent.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C.

chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 27, 2012, beginning at 10 a.m. in the auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic by April 6, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is D. Peter Merkel, the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1— INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 871(m) and 7805 * * *

Par. 2. In § 1.863–7, paragraph (a) is revised to read as follows:

§ 1.863–7 Allocation of income attributable to certain notional principal contracts under section 863(a).

(a) *Scope*—(1) *Introduction.* [The text of the proposed amendments to § 1.863–7(a)(1) is the same as the text for § 1.863–7T(a)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.871–15 is added to read as follows:

§ 1.871–15 Treatment of dividend equivalents.

(a) *In general.* A dividend equivalent as defined in paragraph (b) of this section shall be treated as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code and the regulations thereunder.

(b) *Dividend equivalent*—(1) *Definition.* The term *dividend equivalent* means—

(i) Any substitute dividend made pursuant to a securities lending transaction, a sale-repurchase transaction, or a substantially similar transaction that (directly or indirectly) is contingent upon or determined by reference to the payment of a dividend (including payments pursuant to a redemption of stock that gives rise to a dividend under section 301) from sources within the United States;

(ii) Any payment made pursuant to a specified notional principal contract (specified NPC) described in section 871(m) or § 1.871–16 that (directly or indirectly) is contingent upon or determined by reference to the payment of a dividend (including payments pursuant to a redemption of stock that gives rise to a dividend under section 301) from sources within the United States; and

(iii) Any substantially similar payment as defined in paragraph (d) of this section.

(2) *Exception*—(i) *In general.* The term dividend equivalent does not include any payment made pursuant to a specified NPC, or any substantially similar payment as defined in § 1.871–15(d), if such payment is contingent upon or determined by reference to an estimate of expected dividends and the estimate of an expected dividend is not adjusted in any way for the amount of an actual dividend.

(ii) *Expected dividends.* For purposes of this section, an expected dividend is not considered an estimate of expected dividends on or after the date that the corporate issuer announces a dividend. A dividend announcement occurs on the earliest date on which the corporation declares, announces, or agrees to the amount or payment of such dividend.

(c) *Payments determined on gross basis.* A payment includes any gross amount that is used in computing any net amount that is transferred to or from the taxpayer under the terms of the contract. For example, a dividend equivalent includes a gross amount determined by reference to a dividend that is used in computing a net payment even if the taxpayer makes a net payment or no payment is made because the net amount is zero.

(d) *Substantially similar payments*—(1) *In general.* For purposes of section 871(m), the following payments are considered payments substantially similar to payments described in paragraph (b)(1)(i) or (b)(1)(ii) of this section and are therefore dividend equivalents:

(i) Any payment of a beneficial owner's tax liability with respect to a dividend equivalent made by a withholding agent is a dividend equivalent received by the beneficial owner in an amount determined under the gross-up formula provided in § 1.1441–3(f)(1).

(ii) Any payment, including the payment of the purchase price or an adjustment to the purchase price, is a dividend equivalent if made pursuant to an equity-linked instrument that is contingent upon or determined by reference to a dividend (including payments pursuant to a redemption of stock that gives rise to a dividend under section 301) from sources within the United States.

(2) *Rules regarding equity-linked instruments*—(i) *In general.* An *equity-linked instrument* is a financial instrument or combination of financial instruments that references one or more underlying securities to determine its value, including a futures contract, forward contract, option, or other contractual arrangement.

(ii) *Equity-linked instruments treated as a notional principal contract.* An equity-linked instrument that provides for a payment that is a substantially

similar payment within the meaning of paragraph (d) of this section is treated as a notional principal contract for purposes of section 871(m)(3), this section, and § 1.871–16.

(e) *Anti-abuse rule.* If a taxpayer enters into a transaction or transactions with a principal purpose of avoiding the application of this section or § 1.871–16, payments made with respect to such transaction or transactions may be treated as a dividend equivalent to extent necessary to prevent the avoidance of these rules.

(f) *Effective/applicability date.* The rules of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 4. Section 1.871–16 is added to read as follows:

§ 1.871–16 Specified notional principal contracts.

(a) *Purpose and scope.* This section provides guidance with respect to the definition of a ''specified notional principal contract'' (specified NPC). Paragraph (b) of this section provides the definition of a specified NPC for payments made after March 18, 2012, through December 31, 2012. Paragraph (c) of this section provides the definition of a specified NPC for payments made after December 31, 2012. Paragraph (d) of this section provides rules with respect to a notional principal contract that becomes a specified NPC during the term of the contract. Paragraph (e) of this section provides rules with respect to the treatment of a specified NPC entered into by related parties. For purposes of section 871(m) and this section, the term *notional principal contract* (NPC) means an NPC as defined in § 1.446–3(c)(1) and an equity-linked instrument as provided in § 1.871–15(d).

(b) [The text of the proposed amendment to § 1.871–16(b) is the same as the text for § 1.871–16T(b) found elsewhere in this issue of the **Federal Register**].

(c) *Specified NPCs after December 31, 2012.* With respect to payments made after December 31, 2012, the term *specified NPC* means any NPC described in any of the paragraphs (c)(1) through (7) of this section.

(1) *Contemporaneous transfers of the underlying securities.* An NPC is described in this paragraph (c)(1) if the long party to the NPC is ''in the market'' with respect to the underlying security on the same day or days that the parties price the NPC or on the same day or days that the NPC terminates.

(i) *Determining when a long party is in the market.* The long party is ''in the market'' with respect to the underlying security if the long party—

(A) Sells or otherwise disposes of the underlying security on the same day or days that the parties price the NPC;

(B) Purchases or otherwise acquires the underlying security on the same day or days that the NPC terminates; or

(C) Either purchases or disposes of the underlying security at a price that is set or calculated in such a way as to be substantially identical to or determined by reference to an amount used to price or terminate the NPC.

(ii) *De minimis exception.* The long party will not be deemed to be in the market with respect to the underlying security if the amount of the underlying securities disposed of on a pricing date or acquired on a termination date is less than ten percent of the notional principal amount of the NPC.

(2) *Underlying security is not regularly traded.* An NPC is described in this paragraph (c)(2) if the underlying security in the NPC is not regularly traded.

(i) *Definition of regularly traded*—(A) *In general.* For purposes of this paragraph (c)(2), an underlying security is regularly traded if such security is listed on one or more qualified exchanges at the time the NPC is priced and the underlying security was traded on at least 15 trading days during the 30 trading days prior to the date the parties price the NPC.

(B) *Special rule for first 30 days following a public offering.* When a corporation initiates a public offering of a security, such security is regularly traded if such security is traded during at least 15 trading days on one or more qualified exchanges during the 30 trading days subsequent to the initial offering.

(C) *Days on which a security is considered traded.* The underlying securities will be considered traded only on those days in which the underlying securities are traded in quantities that exceed ten percent of the 30-day average daily trading volume.

(ii) *Qualified exchange.* For purposes of paragraph (c)(2)(i) of this section, the term *qualified exchange* means a national securities exchange that is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(3) *Underlying security posted as collateral.* An NPC is described in this paragraph (c)(3) if the short party to the NPC posts the underlying security with the long party as collateral and the underlying security posted as collateral represents more than ten percent of the total fair market value of all the collateral posted by the short party on any date that the NPC is outstanding.

(4) *The NPC has a term of fewer than 90 days*—(i) *In general.* An NPC is described in this paragraph (c)(4) if the NPC has a term of fewer than 90 days.

(ii) *Term of an NPC.* For purposes of this section, the term of any NPC is the number of days that the contract is actually outstanding, including the date on which the NPC is terminated, but not the date that the NPC was entered into. For purposes of determining whether a contract is a specified NPC, an NPC is treated as terminated, in whole or in part, on the date that a long party enters into any position within the meaning of § 1.246–5(b)(3) to the extent that the position offsets a portion of the long party's position with respect to an underlying security in the NPC.

(5) *Long party controls short party's hedge.* An NPC is described in this paragraph (c)(5) if—

(i) The long party controls contractually or by conduct the short party's hedge of the short position; or

(ii) The long party enters into an NPC using an underlying equity control program (as defined in paragraph (f)(2) of this section).

(6) *Notional principal amount represents a significant percentage of trading volume*—(i) *In general.* An NPC is described in this paragraph (c)(6) if the notional principal amount of the underlying security in the NPC is greater than—

(A) Five percent of the total public float of that class of security; or

(B) Twenty percent of the 30-day average daily trading volume determined as of the close of the business day immediately preceding the first day in the term of an NPC.

(ii) *Aggregating certain NPCs.* When determining whether the notional principal amount of an NPC represents a significant percentage of the trading volume, a taxpayer must aggregate the notional principal amounts of all NPCs for which the taxpayer is the long party that reference the same underlying security.

(7) *NPC provides for the payment of a special dividend.* An NPC is described in this paragraph (c)(7) if the NPC is entered into on or after the announcement of a special dividend and prior to the ex-dividend date. An announcement of a special dividend occurs on the earliest date on which the corporation declares, announces, or agrees to the amount or payment of such special dividend.

(d) *Specified NPC status arising during the term of the contract*—(1) *In general.* This section provides rules for determining the timing and amount of a dividend equivalent when an NPC is not a specified NPC on the date the parties enter into the NPC and subsequently becomes a specified NPC during the term of the transaction. If an NPC that is not a specified NPC on the date the parties enter into the contract subsequently becomes a specified NPC, any payment made during the term of the contract (including any payment during the period between the date the contract is entered into and the date the contract becomes a specified NPC) that is contingent upon or determined by reference to the payment of a dividend from sources within the United States is a dividend equivalent.

(2) *Determination of dividend equivalent*—(i) *In general.* For purposes of sections 871(a), 881, 4948(a), and chapters 3 and 4 of subtitle A of the Code, when an NPC becomes a specified NPC during the term of the contract, any tax owed with respect to a dividend equivalent made prior to the NPC becoming a specified NPC is payable when the next payment as described in § 1.1871–15(c), including a termination payment, is made pursuant to the contract.

(ii) *Payment to include amount equal to dividend equivalent with respect to current and prior payments.* In computing the amount of tax owed with respect to the termination of the specified NPC or the first payment that occurs after the NPC becomes a specified NPC, the dividend equivalent equals the sum of all the dividend equivalents with respect to the NPC arising before the date the NPC became a specified NPC and the amount of any dividend equivalent arising upon the termination or payment.

(3) *Example.* The rules of this paragraph (d) are illustrated by the following example:

Example. (i) *Facts.* Party A is a foreign corporation organized in a jurisdiction that does not have an income tax treaty with the United States. Party B is a domestic corporation and a dealer in NPCs. Party A and Party B enter into an NPC on Day 1 whereby Party A will pay Party B an amount equal to LIBOR multiplied by the notional value of a specified number of shares of Corporation X, a domestic corporation, plus any depreciation on the same number of shares of Corporation X upon settlement of the contract. In return, Party B will pay Party A an amount equal to any dividends paid on the same specified number of shares of Corporation X, plus any appreciation on those shares upon settlement of the contract. On Day 1, the NPC is not a specified NPC. On Day 30, Party B determines that it owes Party A $25 based on a dividend paid on the underlying security and that Party A owes Party B $125 on the LIBOR leg of the contract. Party A therefore makes a net payment of $100 to Party B. On Day 120, the NPC becomes a specified NPC within the meaning of section 871(m), §§ 1.871–15, and 1.871–16. On Day 120, Party A terminates the contract and makes a net termination payment to Party B. In calculating the net payment, Party B determined that it owes Party A $25 based on a dividend paid with respect to the shares of Corporation X and that Party A owes it $125 attributable to interest and the decrease in the value of the shares of Corporation X.

(ii) *Analysis.* On Day 120, Party A is treated as having received a dividend equivalent of $50. This dividend equivalent consists of the $25 payment made on Day 120 that is based on a dividend payment made with respect to the shares of Corporation X and the $25 dividend equivalent made prior to the contract being considered a specified NPC.

(e) *Related persons and parties to an NPC*—(1) *In general.* For purposes of this section, a related person is considered a party to an NPC. A related person is a person that is related within the meaning of section 267(b) or 707(b)(1) to one of the parties to the NPC.

(2) *NPC entered into between related dealers.* An NPC entered into between related persons is not a specified NPC when the NPC hedges another NPC (whether or not a specified NPC) entered into with an unrelated party and both NPCs were entered into by the related persons in the ordinary course of their business as a dealer in securities or commodities derivatives.

(f) *Definitions*—(1) *Underlying security.* For purposes of this section, the term *underlying security* means, for any NPC, the security with respect to which the dividend referred to in § 1.871–15(b)(1)(ii) is paid. If an NPC references more than one security or a customized index, each security or component of such customized index is treated as an underlying security in a separate NPC for purposes of section 871(m), § 1.871–15, and this section.

(2) *Underlying equity control program*—(i) *In general.* The term *underlying equity control program* means any system or procedure that permits—

(A) A long party to an NPC to direct how a short party hedges its risk under such NPC; or

(B) A long party to acquire, or cause the short party to acquire, an underlying security in a transaction with a short party and to instruct the short party to execute such acquisition in the form of an NPC after acquiring such underlying security.

(ii) *Electronic trading*—(A) *In general.* The term *underlying equity control program* does not include an electronic trading platform that allows customers electronically to place an order to enter into an NPC with a dealer and through which the dealer determines whether and how to hedge its position.

(B) Example. Customer, a foreign corporation, and Dealer have entered into a master agreement that governs NPCs entered into between Customer and Dealer. Customer places an order with Dealer via Dealer's electronic trading platform to enter into an NPC with a long position in 100 shares of Corporation ABC, a domestic corporation. Dealer's electronic trading platform allows Customer to place an order using Dealer's computer program. Dealer's computer system confirms that Corporation ABC is not on its restricted list upon receipt of the order. Dealer's computer system automatically determines whether it has an internal hedge available to offset the risk of a short position in 100 shares of Corporation ABC. To the extent that an internal hedge is unavailable, Dealer's computer program automatically seeks to acquire the stock as a hedge in a market transaction. After obtaining its hedge, Dealer sends a confirmation that memorializes the NPC. The notional amount on the confirmation reflects the price of Dealer's hedge plus a market standard spread. Customer did not enter into the NPC using an underlying equity control program solely by placing the order through Dealer's electronic trading platform because Customer did not direct how Dealer hedged its position under the NPC.

(3) *Customized index*—(i) *In general.* For purposes of this section, the term *customized index* means any index, as determined on the date that the long party and short party enter into an NPC, that is—

(A) A narrow-based index; or

(B) Any other index unless futures contracts or option contracts on such index trade on a qualified board or exchange, as defined in section 1256(g)(7).

(ii) *Narrow-based index.* The term *narrow-based index* means an index—

(A) That has nine or fewer component securities;

(B) In which a component security comprises more than 30 percent of the index's weighting;

(C) In which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(D) In which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest

weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(iii) *Aggregate dollar value of average daily trading volume.* For purposes of determining whether an index is a narrow-based index, the method for determining the aggregate dollar value of average daily trading volume is the method described in Rule 3a55–1(b)(1), 17 CFR 240.3a55–1(b)(1), under the Securities Exchange Act of 1934, as in effect on January 23, 2012.

(4) *Long party.* The *long party* is the party with respect to an NPC entitled to receive any payment pursuant to such contract that is contingent upon or determined by reference to the payment of a dividend from sources within the United States on an underlying security.

(5) *Short party.* The *short party* is any party to an NPC who is not a long party.

(6) *Special dividend.* For purposes of this section, the term *special dividend* means a nonrecurring payment to shareholders of corporate assets that is in addition to a recurring dividend payment, if any (even if paid in conjunction with a recurring dividend).

(g) *Effective/applicability date.* The rules of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. In § 1.881–2, paragraph (b)(3) is added and paragraph (e) is revised to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) * * *

(3) [The text of the proposed amendments to § 1.881–2(b)(3) is the same as the text for § 1.881–2T(b)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) *Effective/applicability date.* Except as otherwise provided in this paragraph (e), this section applies for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. Paragraph (b)(3) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.881–2 (Revised as of January 1, 1971).

Par. 6. Section 1.892–3 is added to read as follows:

§ 1.892–3 Income of foreign governments.

(a)(1) through (a)(5) [Reserved]. For further information, see § 1.892–3T(a)(1) through (a)(5).

(6) *Dividend Equivalents.* Income from investments in stocks includes the payment of a dividend equivalent described in section 871(m) and § 1.871–15.

(b) [Reserved]. For further information, see § 1.892–3T(b).

(c) *Effective/applicability date.* Paragraph (a)(6) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**. See § 1.892–3T(a) for the rules that apply before the date the regulations are published as final regulations in the **Federal Register**.

Par. 7. Section 1.894–1 is amended by redesignating paragraph (c) as (c)(1), adding paragraph (c)(2), and revising paragraph (e) to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(c) * * *

(2) *Dividend equivalents.* The provisions of an income tax convention relating to dividends paid to or derived by a foreign person apply to a dividend equivalent under section 871(m) and § 1.871–15.

* * * * *

(e) *Effective/applicability date.* Paragraphs (a) and (b) of this section apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Except as otherwise provided in this paragraph, paragraph (c) of this section is applicable to payments made after November 1, 1997. Paragraph (c)(2) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**. See paragraph (d)(6) of this section for applicability dates for paragraph (d) of this section.

Par. 8. Section 1.1441–2 is amended by adding paragraphs (b)(6) and (e)(7), and revising paragraph (f) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(6) [The text of the proposed amendments to § 1.1441–2(b)(6) is the same as the text for § 1.1441–2T(b)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(7) [The text of the proposed amendments to § 1.1441–2(e)(7) is the same as the text for § 1.1441–2T(e)(7) published elsewhere in this issue of the **Federal Register**].

(f) *Effective/applicability date.* Except as otherwise provided in this paragraph (f), this section applies to payments made after December 31, 2000. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006. Paragraphs (b)(6) and (e)(7) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

Par. 9. Section 1.1441–3 is amended by:

1. Redesignating paragraph (h) as paragraph (j), and revising newly designated paragraph (j).

2. Adding new paragraphs (h) and (i).

The revision and addition read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(h) *Dividend equivalents*—(1) *In general.* [The text of the proposed amendments to § 1.1441–3(h)(1) is the same as the text for § 1.1441–3T(h)(1) published elsewhere in this issue of the **Federal Register**].

(2) *Procedures for withholding with respect to a dividend equivalent paid prior to a notional principal contract (NPC) becoming a specified NPC.* In the event that an NPC becomes a specified NPC (as defined in § 1.871–16) after the date that the parties enter into the NPC, the term dividend equivalent includes any payment that is made prior to the date the NPC becomes a specified NPC and that was (directly or indirectly) contingent upon or determined by reference to the payment of a dividend (including payments pursuant to a redemption of stock that gives rise to a dividend under section 301) from sources within the United States. The withholding agent is required to withhold with respect to a dividend equivalent made prior to the NPC becoming a specified NPC when the next payment as described in § 1.871–15(c), including a termination payment, is made pursuant to the contract. For purposes of section 6601 and the regulations thereunder, the last date prescribed for payment of tax imposed with respect to a dividend equivalent made prior to an NPC becoming a specified NPC is determined based on

the date of the next payment as described in § 1.871–15(c), including a termination payment, made pursuant to the contract. For further guidance regarding liability for penalties and interest, see §§ 1.1441–1(b)(7)(iii) and 1.1461–1(a)(2).

(3) *Effective/applicability date.* The rules of this paragraph (h)(2) apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

(i) [The text of the proposed amendments to § 1.1441–3(i)(1) is the same as the text for § 1.1441–3T(i)(1) published elsewhere in this issue of the **Federal Register**].

(j) *Effective/applicability date.* Except as otherwise provided in paragraphs (g), (h), and (i) of this section, this section applies to payments made after December 31, 2000.

Par. 10. Section 1.1441–4 is amended by:

1. Revising paragraph (a)(3)(i).

2. Adding paragraph (a)(3)(iii).

3. Revising paragraph (g)(1).

The revisions and addition read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(3)(i) [The text of the proposed amendments to § 1.1441–4(a)(3)(i) is the same as the text for § 1.1441–4T(a)(3)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(iii) [The text of the proposed amendments to § 1.1441–4(a)(3)(iii) is the same as the text for § 1.1441–4T(a)(3)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) *Effective/applicability date*—(1) *General rule.* Except as otherwise provided in this paragraph (g)(1), this section applies to payments made after December 31, 2000. The rules of paragraph (a)(3)(iii) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

* * * * *

Par. 11. Section 1.1441–6 is amended by:

1. Revising paragraph (c)(2).

2. Redesignating paragraph (h) as paragraph (i) and revising newly designated paragraph (i).

3. Adding a new paragraph (h).

The revision and addition read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(c) * * *

(2) *Income to which special rules apply.* The income to which paragraph (c)(1) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a), and amounts paid with respect to loans of securities described in this paragraph (c)(2). With respect to a dividend equivalent as defined in section 871(m) and § 1.871–15, this paragraph (c)(2) applies to the extent that the underlying security as defined in § 1.871–16(f)(1) satisfies the requirements of this paragraph (c)(2). For purposes of this paragraph (c)(2), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and § 1.1092(d)–1 when documentation is provided.

* * * * *

(h) *Dividend equivalents.* The rate of withholding on a dividend equivalent may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. For this purpose, a dividend equivalent is treated as a dividend from sources within the United States. To receive a reduced rate of withholding with respect to a dividend equivalent, a foreign person must satisfy the other requirements described in this section.

(i) *Effective/applicability dates*—(1) *General rule.* This section applies to payments made after December 31, 2000, except for paragraph (g) of this section which applies to payments made after December 31, 2001, and paragraph (h) of this section which applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

(2) [Reserved]

Par. 12. Section 1.1441–7 is amended by:

1. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly designated paragraph (a)(3).

2. Adding a new paragraph (a)(2).

3. Adding an entry for *Example 6* in paragraph (a)(3).

4. Revising paragraph (g).

The revision and addition read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *

(2) [The text of the proposed amendments to § 1.1441–7(a)(2) is the same as the text for § 1.1441–7T(a)(2) published elsewhere in this issue of the **Federal Register**].

(3) [The text of the proposed amendments to § 1.1441–7(a)(3) is the same as the text for § 1.1441–7T(a)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

Example 6. [The text of the proposed amendments to § 1.1441–7(a)(3), *Example 6* is the same as the text for § 1.1441–7T(a)(3), *Example 6* published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) *Effective/applicability date.* Except as otherwise provided in paragraph (f)(3) of this section and as otherwise provided in this paragraph (g), this section applies to payments made after December 31, 2000. Paragraph (a)(2) applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

Par. 13. Section 1.1461–1 is amended by:

1. Redesignating paragraph (c)(2)(i)(L) and (M) as paragraphs (c)(2)(i)(M) and (N) respectively.

2. Adding a new paragraph (c)(2)(i)(L).

3. Revising paragraph (i).

The addition reads as follows:

§ 1.1461–1 Payment and returns of tax withheld.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(L) [The text of the proposed amendments to § 1.1461–1(c)(2)(i)(L) is the same as the text for § 1.1461–1T(c)(2)(i)(L) published elsewhere in this issue of the **Federal Register**].

* * * * *

(i) *Effective/applicability date.* Unless otherwise provided in this section and as otherwise provided in this paragraph (i), this section shall apply to returns required for payments made after December 31, 2000. The rules of paragraph (c)(2)(i)(L) of this section apply to returns for payments made on or after the date of publication of the Treasury decision adopting these rules

as final regulation in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–1231 Filed 1–19–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168745–03]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations relating to the deduction and capitalization of expenditures related to tangible property.

DATES: The public hearing originally scheduled for Thursday, April 4, 2012, at 10 a.m. is rescheduled for Wednesday, April 25, 2012, at 10 a.m. Written or electronically submitted public comments are due by March 26, 2012. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 21, 2012.

ADDRESSES: The public hearing is being held in the auditorium of the Internal Revenue Service building, 1111 Constitution Avenue NW., Washington, DC.

Due to building security procedures, visitors must enter at the Constitution Avenue entrance. Send submissions to: CC:PA:LPD:PR (REG–168745–03); Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions my be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–168745–03) Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, comments may be transmitted electronically via the Federal eRulemaking Portal at *www.regulations.gov.* (IRS–REG–168745–03)

FOR FURTHER INFORMATION CONTACT: Regarding the regulations, Merrill D. Feldstein or Alan Williams at (202) 622–4950; regarding the public comments and/or public hearing Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, December 27, 2011 (76 FR 81128), announced that a public hearing on proposed regulations relating to the deduction and capitalization of expenditures related to tangible property, would be held on Wednesday, April 4, 2012, beginning at 10 a.m. in the auditorium of the Internal Revenue Service Building at 1111 Constitution Avenue NW., Washington, DC.

The date of the public hearing has been changed. The hearing is now scheduled for Wednesday, April 25, 2012, beginning at 10 a.m. in the auditorium of the Internal Revenue Service building at 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 21, 2012.

Guy R. Traynor,

Federal Register Liaison, Publications and Regulations Br., Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–1256 Filed 1–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133223–08]

RIN 1545–BI19

Indian Tribal Government Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document announces a public hearing on proposed regulations, (REG–133223–08) relating to Indian tribal government plans.

DATES: The public hearing is scheduled for Tuesday, June 5, 2012, at 10 a.m. in the auditorium of the Internal Revenue Building. The IRS must receive outlines of the topics to be discussed at the public hearing by February 6, 2012.

ADDRESSES: The public hearing is being held in the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to CC:PA:LPD:PR (REG–133223–08), Room 5205, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133223–08), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–133223–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the advanced notice of proposed rulemaking (REG–133223–08) that was published in the **Federal Register** on Tuesday, November 8, 2011 (76 FR 69188).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline has passed, persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and four copies) by February 6, 2012.

The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publications and Regulations Br., Procedure and Administration.

[FR Doc. 2012–1252 Filed 1–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Chapter II

USACE's Plan for Retrospective Review Under E.O. 13563

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of comment period.

SUMMARY: On November 16, 2011, the U.S. Army Corps of Engineers (USACE) issued a Notice of Intent and Request for Comments on its plan to retrospectively review its Regulations implementing the USACE Regulatory Program at 33 CFR 320–332 and 334 in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review'' (E.O.), issued on January 18, 2011, directs federal agencies to review existing significant regulations and identify those that can be made more effective or less burdensome in achieving regulatory objectives. The Regulations are essential for implementation of the Regulatory mission; thus, USACE believes they are a significant rule warranting review pursuant to E.O. 13563. The E.O. further directs each agency to periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The original comment period ended on January 17, 2012. As a result of the request for time extensions, we have extended the comment period 45 days.

DATES: Written comments must be submitted on or before March 2, 2012.

ADDRESSES: You may submit comments, identified by docket number COE–2011–0028, by any of the following methods:

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

Email: regulatory.review@usace.army.mil. Include the docket number, COE–2011–0028, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW–CO–R (Ms. Amy S. Klein), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Instructions for submitting comments are provided in the original notice published on November 16, 2011 (76 FR 70927).

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Ms. Amy S. Klein, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, DC 20314–1000, by phone at (202) 761–4559 or by email at *regulatory.review@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Please refer to the original notice published on November 16, 2011 (76 FR 70927) for additional details. The original notice solicits comments regarding eight questions. These questions are not intended to be exhaustive, and respondents are encouraged to raise additional issues or make suggestions unrelated to these questions.

Dated: January 17, 2012.

Richard C. Lockwood,

Acting Chief, Operations and Regulatory Directorate of Civil Works.

[FR Doc. 2012–1269 Filed 1–20–12; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0642 FRL–9620–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Control of Nitrogen Oxides Emissions From Industrial Boilers and Process Heaters at Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision amends Delaware's regulation that establishes controls for nitrogen oxides (NO_X) emissions from industrial boilers and process heaters at petroleum refineries by including a NO_X emission limit for the fluid catalytic cracking unit carbon monoxide (CO) boiler at the Delaware City Refinery and providing for a facility-wide NOx emission cap compliance alternative. This SIP revision also includes a demonstration that these amendments to the existing Delaware regulation will not interfere with the attainment or maintenance of any National Ambient Air Quality Standards (NAAQS) or any other applicable requirement of the Clean Air Act (CAA). This action is being taken under the CAA.

DATES: Written comments must be received on or before February 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0642 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0642, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0642. 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On June 17, 2011, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP to amend Regulation No. 1142, Section 2.0—Control of Nitrogen Oxides Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. Delaware first promulgated Section 2.0 of Regulation No. 1142 on July of 2007 and subsequently revised it in 2009, as a result of a settlement agreement between DNREC and the Premcor Refining Group, Inc. (Premcor). On November 17, 2009, DNREC submitted Section 2.0 of Regulation No. 1142 as a SIP revision and on June 6, 2010 (75 FR 31711), EPA approved it into the Delaware SIP.

Furthermore, in 2009, the operations at the Delaware City Refinery ceased and in 2010, the refinery ownership changed from Premcor to the Delaware City Refining Company, LLC (DCRC). On May 31, 2010, DNREC and DCRC reached an agreement on the Delaware City Refinery's acquisition, restart, and operation. One element of that agreement was to revise Section 2.0 Regulation No. 1142 to provide for a facility-wide NO_X emission cap compliance alternative. This SIP revision pertains to the amendments to Section 2.0 of Regulation No. 1142 as a result of DNREC and DCRC's agreement.

II. Summary of SIP Revision

Delaware's SIP revision establishes controls for NO_X emissions from industrial boilers and process heaters at petroleum refineries. This SIP revision includes a NO_X emissions limit for the fluid catalytic cracking unit CO boiler (Unit 23–H–3) and provides for, as an option, compliance with a facility-wide NO_X cap as an alternative to unit specific NO_X emission limits. The initial facility-wide cap is being established at the level of Premcor's actual 2008 NO_X emissions (i.e., 2,525 tons per year (tpy)) and will decline in two step decreases, as follows: (1) 2,525 tpy, evaluated over each 12 consecutive month rolling period, for any 12 month rolling period ending on or before January 2014; (2) 2,225 tpy, evaluated over each 12 consecutive month rolling period, commencing with the 12 month rolling period beginning on December 31, 2013 and ending on December 31, 2014; and (3) 1,650 tpy, evaluated over each 12 consecutive month rolling period, commencing with the 12 month rolling period beginning on December 31, 2014 and ending on December 31, 2015. Under the revised Section 2.0 of Regulation No. 1142, either all of the unit specific NO_X emission limits apply or the facility-wide cap applies at all times. In addition, this SIP revision also includes a demonstration that these amendments to the existing Delaware regulation will not interfere with the attainment or maintenance of any NAAQS or any other applicable requirement of the CAA. Additional technical support regarding this regulation can be found in the technical support document (TSD) available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2011–0642.

III. Proposed Action

EPA's review of this material indicates that the amendments to Section 2.0 of Regulation No. 1142 will not affect the attainment and maintenance of any of the NAAQS. EPA is proposing to approve the Delaware SIP revision, submitted on June 17, 2011, amending Regulation No. 1142, Section 2.0 that includes a NO_X emissions limit for the fluid catalytic cracking unit CO boiler at the Delaware City Refinery and provides for, as an option, compliance with a facility-wide NO_X cap as an alternative to unit specific NO_X emission limits. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to the control of NO_X

emissions from industrial boilers and process heaters at petroleum refineries in Delaware, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 3, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2012–1225 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0353–201122; FRL–9621–6]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the state implementation plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) with respect to sections 110(a)(2)(C) and (J), of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as ''infrastructure submission''). Tennessee's infrastructure submission, provided to EPA on December 14, 2007, and clarified in a subsequent May 28, 2009, submission, addressed the required infrastructure elements for the 1997 8-hour ozone NAAQS, however the subject of this notice is limited to infrastructure elements 110(a)(2)(C) and (J). All other applicable Tennessee infrastructure elements will be addressed in a separate rulemaking.

DATES: Written comments must be received on or before February 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0353, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0353,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0353. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. *See* 62 FR 38856. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone NAAQS created uncertainty about how to proceed and many states did not provide the required ''infrastructure'' SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 8-hour ozone NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans; 8-hour ozone NAAQS,'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. For those states that did receive findings, such as Tennessee, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. However, the findings of failure to submit did not impose sanctions or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements contained in the Title I part D plan for nonattainment areas as required under section 110(a)(2)(I). Additionally, the findings of failure to submit for the infrastructure submittals are not a SIP call pursuant to section 110(k)(5).

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Tennessee's infrastructure submission was received by EPA on December 14, 2007, and was determined to be complete on March 27, 2008, for all elements with the exception of 110(a)(2)(C) and (J). Tennessee was among other states that received a finding of failure to submit because its infrastructure submission was not complete for elements (C) and (J) for the 1997 8-hour ozone NAAQS by March 1, 2008. Specifically, the Tennessee infrastructure submission did not address the part C Prevention of Significant Deterioration (PSD) permit program requirements promulgated in the 1997 8-Hour Ozone NAAQS Implementation Rule New Source Review (NSR) Update—Phase 2 final rule (hereafter referred to as the Ozone Implementation NSR Update) recognizing nitrogen oxide (NOx) as an ozone precursor. *See* 70 FR 71612, (November 29, 2005). On May 28, 2009, TDEC submitted a SIP revision to EPA for federal approval which included revisions to Chapter 1200–03–09 of the Tennessee NSR program that address changes promulgated in the Ozone Implementation NSR Update. On December 5, 2011, EPA proposed to approve Tennessee's May 28, 2009, SIP revision. *See* 76 FR 75845. EPA is moving forward with final action on Tennessee's May 28, 2009, SIP revision in an action separate from today's action. Today's action is proposing to approve Tennessee's infrastructure submission for which EPA made the findings of failure to submit on March 27, 2008. This action is not approving any specific rule, but rather proposing that Tennessee's SIP, once two separate proposed revisions have been incorporated, meets certain CAA requirements. As discussed further below, final approval of today's proposed rule is contingent upon the Agency first taking final action to approve Tennessee's Ozone Implementation NSR Update (76 FR 75845) and PSD Greenhouse Gas (GHG) Tailoring Rule Revision (75 FR 68265). As such, final action approving Tennessee's infrastructure submission with respect to infrastructure elements 110(a)(2)(C) and (J) will not occur prior to those revisions being approved in the SIP.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2)

2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (SSM); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 8-hour ozone NAAQS from Tennessee.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Tennessee.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential

submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address the interstate transport. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (*e.g.,* the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Tennessee.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 p.m.$_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17]

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062

Continued

Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how Tennessee addressed the elements (C) and (J) of sections 110(a)(1) and (2) ''infrastructure'' provisions?

The Tennessee infrastructure submission addresses the provisions of sections 110(a)(1) and (2) with respect to elements (C) and (J), as described below.

1. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources.* In this action, EPA is proposing to approve Tennessee's infrastructure SIP for the 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Chapter 1200–3–9, *Construction and Operating Permits,* of Tennessee's SIP pertains to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. This regulation addresses many of the infrastructure element 110(a)(2)(C) requirements, however, as discussed below, there are two pending revisions to the Tennessee SIP (including revisions to Chapter 1200–3–9) that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These two revisions are related to the Ozone Implementation NSR Update and the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (75 FR 31514).

The first pending revision to the Tennessee SIP (Ozone Implementation NSR Update revisions) was submitted by TDEC on May 28, 2009. That revision modifies provisions of the state's SIP at Chapter 1200–3–9, *Construction and Operating Permits.* In addition to meeting the requirements of the Ozone Implementation NSR Update, these revisions are also necessary to address portions of the infrastructure SIP requirements described at element 110(a)(2)(C). Specifically, the May 28, 2009, SIP revisions address the Ozone Implementation NSR Update requirements to include NOx as an ozone precursor for permitting purposes. These revisions involve changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NOx emissions are ozone precursors. On December 5, 2011, EPA proposed approval of Tennessee's May 28, 2009, submission. *See* 76 FR 75845. EPA will take final action on these regulations in a separate action from this notice.

The second pending rulemaking pertains to revisions to the PSD program promulgated in the GHG Tailoring Rule. On November 5, 2010, EPA published a rulemaking proposing to approve Tennessee's PSD GHG Tailoring Rule revision,[19] which was submitted to EPA on August 30, 2010, for parallel processing.[20] *See* 75 FR 68265. This proposed revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Tennessee's PSD permitting requirements for their GHG emissions, and thereby addresses the thresholds for GHG permitting applicability in Tennessee. On January 11, 2012, EPA received Tennessee's PSD GHG Tailoring Rule revision final submittal. EPA will take final action on these regulations in a separate action from this notice.

Both of these proposed SIP revisions[21] address requisite requirements of infrastructure element 110(a)(2)(C), therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(C) is contingent upon EPA taking final action to approve each of these pending revisions into the Tennessee SIP. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(C) will not occur prior to final approval of these related SIP revisions.

EPA also notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

(November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[19] On December 30, 2010, EPA published a final rulemaking, ''Limitation of Approval of Prevention of Significant Deterioration Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans: Final Rule'' (75 FR 82536), which narrowed its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including Tennessee. Specifically, in the PSD Narrowing Rule, EPA withdrew its previous approval of Tennessee's SIP to the extent it applied PSD requirements to GHG-emitting sources below the thresholds described in the final Tailoring Rule. The provisions of SIPs from which EPA withdrew its approval are treated as submitted by the state but not yet acted upon by EPA. Once a state submits a SIP revision for EPA's approval to incorporate the Tailoring Rule thresholds, EPA will treat the approval as removing the no-longer-approved provisions. *See* 75 FR at 82540.

[20] Tennessee requested parallel processing of this SIP revision because on the date of its submittal, the revision was not yet state-effective. Under parallel processing an EPA Regional Office works closely with the state while developing new or revised regulations. Generally the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA then proceeds with a federal rulemaking to add to or revise the SIP during approximately the same time during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and federal action in parallel.

[21] EPA's proposed approval of: (1) Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements and (2) Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee (*See* 76 FR 75845 and 75 FR 68265).

2. 110(a)(2)(J). In this action, EPA is also proposing to approve Tennessee's infrastructure SIP for the 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and the PSD and visibility protection requirements of part C of the Act.

110(a)(2)(J) (121 consultation) Consultation with government officials: Chapter 1200–3–9 *Construction and Operating Permits,* as well as the Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Tennessee adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires TDEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved Tennessee's consultation procedures on May 16, 2003 (68 FR 26492). EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 1997 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (127 public notification) Public notification: TDEC has public notice mechanisms in place to notify the public of ozone and other pollutant forecasting, including an air quality monitoring Web site with ground level ozone alerts, *http://tn.gov/environment/apc/ozone/.* Chapter 1200–3–15, *Emergency Episode Requirements,* requires that TDEC notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (Part C) PSD and visibility protection: Tennessee demonstrates its authority to regulate new and modified sources of ozone precursors, volatile organic compounds, and NOx to assist in the protection of air quality in Chapter 1200–3–9, *Construction and Operating Permits.* As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) also requires compliance with applicable provisions of the PSD program described in part C of the Act. Accordingly, the pending EPA actions on the Ozone Implementation NSR Update and GHG Tailoring Rule revisions to Tennessee's SIP are likewise prerequisites to today's proposed action to approve the State's infrastructure element 110(a)(2)(J). See the discussion for element 110(a)(2)(C) above for a description of these two pending revisions to the Tennessee SIP.

Both of these proposed SIP revisions [22] address requisite requirements of infrastructure element 110(a)(2)(J) (PSD and visibility protection), therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) is contingent upon EPA taking final action to approve each of these pending revisions into the Tennessee SIP. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) will not occur prior to final approval of these related SIP revisions.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Tennessee has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. These revisions are currently under review and will be acted on in a separate action. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 8-hour ozone NAAQS when necessary.

[22] EPA's proposed approval of: (1) Tennessee's PSD/NSR regulations which addresses the Ozone Implementation NSR Update requirements and (2) Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee (*See* 76 FR 75845 and 75 FR 68265).

V. Proposed Action

As described above, following final approval of the proposed revisions to the Tennessee SIP regarding the Ozone Implementation NSR Update and the PSD GHG Tailoring Rule Revision, TDEC will have addressed elements 110(a)(2)(C) and (J) of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee. EPA is proposing to approve Tennessee's infrastructure submission for the 1997 8-hour ozone NAAQS for these elements, contingent upon the final approval of those revisions, because its December 12, 2007, and May 28, 2009, submissions will then be consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 12, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–1220 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2011–0960; A–1–FRL–9621–2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Determination of Attainment of the 1997 Ozone Standard for the Western Massachusetts Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing two separate and independent determinations regarding the Springfield (Western Massachusetts) moderate 1997 8-hour ozone nonattainment area. First, EPA is proposing to determine that the Western Massachusetts nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, based upon complete, quality-assured, certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. Preliminary data for 2011 indicate the area continues to attain the standard. If this proposed determination is made final, under the provisions of EPA's ozone implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS. Second, based on complete, quality-assured and certified air monitoring data for 2007–2009, EPA is proposing to determine that the Western Massachusetts nonattainment area also attained the 1997 ozone NAAQS as of June 15, 2010, its applicable attainment date.

DATES: Written comments must be received on or before February 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2011–0960 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2011–0960,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2011–0960. 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 through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected.

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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What actions is EPA taking?

EPA is proposing to determine that the Springfield (Western Massachusetts) moderate 8-hour ozone nonattainment area (hereafter ''the Western Massachusetts area'') has attained the 1997 8-hour NAAQS for ozone. This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. Preliminary data available for 2011 indicate the area continues to attain the standard. In addition, pursuant to section 181(b)(2)(A) of the Clean Air Act (CAA), and based upon complete, quality assured and certified air monitoring data for 2007–2009, EPA is proposing to determine that this area attained the 1997 ozone NAAQS by its applicable attainment date (June 15, 2010).

II. What is the effect of these actions?

If EPA's determination that the area is attaining the standard is made final, under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), the requirements for the Western Massachusetts moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. This proposed action, if finalized, would not constitute a redesignation to attainment under the Clean Air Act (CAA) section 107(d)(3), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area would remain moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment.

If this determination of attainment is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent CAA requirements. It should be noted, that Massachusetts submitted an attainment demonstration, reasonable further progress (RFP) plan and contingency measures for this area on January 31, 2008. EPA has not taken action on the attainment demonstration but has proposed approval of the RFP plan and contingency measures for the Western Massachusetts area. (See 75 FR 57221, September 20, 2010.)

In addition, under section 181(b)(2)(A) of the CAA and the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.902(a)), EPA is proposing to determine, that the Western Massachusetts area attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. The effect of a final determination of attainment by the area's attainment date would be to discharge EPA's obligation under section 181(b)(2)(A), and to establish that, in accordance with that section, the area would not be reclassified for failure to attain by its applicable attainment date.

III. What is the background for these actions?

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The Western Massachusetts area was designated as a moderate ozone nonattainment area. The Western Massachusetts nonattainment area consists of Berkshire, Franklin, Hampden and Hampshire counties. Recent air quality data indicate that the Western Massachusetts area is attaining the 1997 8-hour ozone standard.

IV. What is EPA's analysis of the relevant air quality data?

The EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 CFR Part 50 and recorded in the Air Quality Data System (AQS) database, for Western Massachusetts, from 2007 through 2010.

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 parts per million (ppm) (*i.e.,* 0.084 ppm, based on the rounding convention in 40 CFR Part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitoring site within the area, then the area is meeting the NAAQS. Also, the data completeness requirement is met when the 3-year average of the percent of days with valid ambient monitoring data is more than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR Part 50.

Table 1 shows the fourth-highest daily maximum 8-hour average ozone concentrations for the four Western Massachusetts area monitors for the years 2007–2009, and the ozone design values for these same monitors based on 2007–2009. Table 2 shows similar data for the 2008–2010 monitoring period.

TABLE 1—2007–2009 FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS AND 2007–2009 DESIGN VALUES (PARTS PER MILLION) IN THE WESTERN MASSACHUSETTS AREA

Site ID	Site location	4th High 2007	4th High 2008	4th High 2009	Design value (2007–2009)
250034002	Adams [1]	0.080	0.072	0.066	0.072
250130008	Chicopee	0.098	0.078	0.076	0.084
250150103	N. Amherst	0.080	0.073	0.070	0.074
250154002	Ware	0.087	0.079	0.076	0.080

TABLE 2—2008–2010 FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS AND 2008–2010 DESIGN VALUES (PARTS PER MILLION) IN THE WESTERN MASSACHUSETTS AREA

Site ID	Site location	4th High 2008	4th High 2009	4th High 2010	Design value (2008–2010)
250034002 ...	Adams [1]	0.072	0.066	0.073	0.070
250130008 ...	Chicopee	0.078	0.076	0.074	0.076
250150103 ...	N. Amherst	0.073	0.070	0.069	0.070
250154002 ...	Ware	0.079	0.076	0.076	0.077

EPA's review of these data indicates that the Western Massachusetts area attained the 1997 8-hour ozone NAAQS and met its applicable attainment deadline, based on 2007–2009 data. Our review also shows that the area continues to attain the standard, based on complete, quality-assured and certified data for the 2008–2010 monitoring period. Preliminary ozone data for the 2011 ozone monitoring season also indicate attainment.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters pertaining to this rulemaking action. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register.**

V. Proposed Actions

EPA is proposing two separate and independent determinations. First, EPA is proposing to determine that the Western Massachusetts 1997 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone standard, based on complete, quality-assured data for the 2007–2009 and 2008–2010 monitoring periods. Preliminary data available for 2011 indicate the area continues to attain the standard. As provided in 40 CFR 51.918, if EPA finalizes this determination, it would suspend the requirements for Massachusetts to submit planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the standard.[2] In addition, under section 181(b)(2)(A) of the Clean Air Act and the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.902(a)), based upon complete, quality-assured and certified data for 2007–2009, EPA is proposing to determine that this area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010.

VI. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 9, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–1223 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

[1] The data capture percentage for this ozone monitor was below EPA data capture requirements for the 1997 8-hour ozone NAAQS, for both the 2007–2009 and 2008–2010 monitoring periods. The Massachusetts Department of Environmental Protection performed a missing data analysis for this site in accordance with the regulatory requirements of 40 CFR part 50, Appendix I. The Massachusetts missing data analysis used a combination of meteorology and air quality data for ozone monitors near the Adams site for the missing days to decisively conclude that on the days with missing ozone data, the ozone levels, if captured, would have been below the 1997 8-hour ozone NAAQS. Thus, by rule, these days can be counted for the purpose of meeting the data completeness requirement. The missing data analysis for this site was approved by EPA on December 15, 2011. The approval letter is in the Docket for this action.

[2] Massachusetts submitted an attainment demonstration and contingency measures for this area on Jan. 31, 2008. EPA has not taken action on the attainment demonstration, but has proposed approval of the reasonable further progress plan and contingency measures. (See 75 FR 57221, Sept. 10, 2010.)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0714; FRL–9620–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 Annual Fine Particulate Standard for the Philadelphia-Wilmington Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the Philadelphia-Wilmington fine particle ($PM_{2.5}$) nonattainment area (the Philadelphia Area). EPA is proposing to make a determination that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ national ambient air quality standard (NAAQS) by its attainment date of April 5, 2010. EPA is also proposing to make a clean data determination, finding that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS, based on ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. In the Final Rules section of this **Federal Register**, EPA is making these determinations as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and in the Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 22, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0714 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0714, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0714. 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 *ww.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.

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

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's proposed action related to Delaware or Pennsylvania, please contact Maria A. Pino (215) 814–2181, or by email at *pino.maria@epa.gov.* If you have questions concerning EPA's proposed action related to New Jersey, please contact Henry Feingersh, (212) 637–3382, or by email at *feingersh.henry@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, ''Determinations of Attainment of the 1997 Annual Fine Particulate Standard for the Philadelphia-Wilmington Nonattainment Area,'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 8, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

Dated: January 3, 2012.

Judith A. Enck,

Regional Administrator, Region II.

[FR Doc. 2012–1088 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–1042; FRL–9621–3]

RIN 2060–AQ90

National Emissions Standards for Hazardous Air Pollutants: Mineral Wool Production and Wool Fiberglass Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of extension of public comment period.

SUMMARY: The EPA published in the **Federal Register** on November 25, 2011, the proposed rules, ''National Emission Standards for Hazardous Air Pollutants: Mineral Wool Production and Wool Fiberglass Manufacturing.'' The EPA was asked to hold a public hearing only on the wool fiberglass manufacturing proposed rule, and on December 20, 2011, published a notice announcing the hearing and extending the comment period for only the wool fiberglass manufacturing proposed rule (76 FR 78872). The comment period for the mineral wool production proposed rule was not extended because no public hearing was requested and no requests

for an extension of the comment period were received. It has come to our attention that confusion arose from the result of having two different comment periods for the two proposed rules in the same action. Therefore, the EPA is extending the public comment period for the mineral wool production proposed rule for 10 days from January 24, 2012 to February 3, 2012, so that comments on both rules in this action are due on the same date.

DATES: Comments must be received by February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Questions concerning the November 25, 2011, proposed rule should be addressed to Susan Fairchild, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D 243–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5167; facsimile number: (919) 541–3207; email address: *Fairchild.susan@epa.gov.*

The proposal for the Mineral Wool Production and Wool Fiberglass Manufacturing NESHAP was published in the **Federal Register** on November 25, 2011, and is available at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* and also in the docket identified below.

How can I get copies of this document and other related information?

The EPA has established dockets for the proposed rules, ''National Emission Standards for Hazardous Air Pollutants: Mineral Wool Production Risk and Technology Review,'' under No. EPA–HQ–OAR–2010–1041; and ''National Emission Standards for Hazardous Air Pollutants: Wool Fiberglass Manufacturing Risk and Technology Review,'' under No. EPA–HQ–OAR–2010–1042. Both dockets are available at *www.regulations.gov.*

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 17, 2012.

Gina McCarthy,

Assistant Administrator.

[FR Doc. 2012–1222 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2011–0407; FRL–9613–5]

New Mexico: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs,'' New Mexico's authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conversation and Recovery Act (RCRA). In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. The EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by February 22, 2012.

ADDRESSES: Send written comments to Alima Patterson, Region 6 Regional Authorization Coordinator, and Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533 or (214) 665–8178. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: December 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–998 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 111104664–1798–01]

RIN 0648–BB61

Shrimp Fisheries of the Gulf of Mexico and South Atlantic; Revisions of Bycatch Reduction Device (BRD) Testing Protocols; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to a proposed rule that published on January 9, 2012, regarding proposed changes to shrimp regulations. The proposed rule stated that the ''Expanded Mesh BRD'' would be decertified for use by the Gulf of Mexico shrimp fishery after May 24, 2012. That information was not correct. The ''Extended Funnel BRD'' is the BRD design that will no longer be provisionally certified for use in the Gulf of Mexico shrimp fishery after May 24, 2012. This rule corrects that mistake. Both the Expanded Mesh and Extended Funnel BRDs remain certified for use in the South Atlantic shrimp fishery.

DATES: Written comments must be received on or before February 8, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0274, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.*
- *Mail:* Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* enter ''NOAA–NMFS–2011–0274'' in the keyword search, then select ''Send a Comment or Submission.'' NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

FOR FURTHER INFORMATION CONTACT: Anne Marie Eich, telephone: (727) 209–5968, email: *AnneMarie.Eich@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc. 2012–153, published in the **Federal Register** issue of January 9, 2012 (77 FR 1045), under the heading ''BRD Certifications'', on page 1046, column 1, 1st and 12th lines, correct the reference ''Expanded Mesh'' to read as ''Extended Funnel''.

Dated: January 17, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–1259 Filed 1–20–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 14
Monday, January 23, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings of the Committee on Rulemaking of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of two public meetings of the Committee on Rulemaking of the Assembly of the Administrative Conference of the United States. At these meetings, the committee will consider a draft report and a draft recommendation on the issue of midnight rules. Complete details regarding the committee meeting, the contours of the Midnight Rules Project, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Rulemaking.''

Comments may be submitted by email to *Comments@acus.gov,* with ''Committee on Rulemaking'' in the subject line, or by postal mail to ''Committee on Rulemaking Comments'' at the address given below.

DATES: Thursday, February 23, 2012 from 9:30 a.m. to 12:30 p.m. and Wednesday, March 21, 2012 from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Emily Schleicher Bremer, Designated Federal Officer, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to discuss a draft report on the Midnight Rules Project. The report, prepared by Professor Jack Beermann (Boston University School of Law), presents the findings of a study on the issue of midnight rules and proposed procedures that could improve presidential and agency practices with regard to midnight rules. At its meetings, the Committee on Rulemaking will also consider a draft recommendation based on the consultant's report.

Dated: January 18, 2012.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2012–1200 Filed 1–20–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 18, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Phytosanitary Export Certification.

OMB Control Number: 0579–0052.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) among other things provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will use the information collected to locate shipments, guide inspection, and issue a certificate to meet the requirements of the importing country. Failure to provide this information would have an impact on many U.S. exporters who would no longer be able to engage in the business of exporting plants and plant products overseas.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 10,991.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 352,631.

Animal and Plant Health Inspection Service

Title: Poultry and Pork Products from Mexico Transiting the United States.

OMB Control Number: 0579–0145.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate

pests or diseases of livestock or poultry. The Animal & Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is the Agency charged with carrying out the disease prevention mission. This Agency regulates the importation of animals and animal products into the United States to guard against the introduction of exotic animal diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the United States' ability to compete in exporting animals and animal products. The regulations under which APHIS conducts disease prevention activities are contained in Title 9, Chapter D, parts 91 through 99 of the Code of Federal Regulations.

Need and Use of the Information: APHIS will collect information to ensure that fresh pork and pork products, as well as poultry carcasses, parts, and products transiting the United States from Mexico pose a negligible risk of introducing classical swine fever and END into the United States. APHIS will also collect the name and address of the exporter, the origin and destination points of the commodities, how much and what type of commodity will be transiting; the intended port of entry, the date of transportation, the method and route of shipment, and other information concerning the transiting project that will enable APHIS to determine whether any disease introduction risk is associated with the transit and if so, what risk mitigation measures will be necessary to minimize that risk.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 29.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 33.

Animal and Plant Health Inspection Service

Title: Infectious Salmon Anemia (ISA)—Payment of Indemnity.

OMB Control Number: 0579–0192.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pest or diseases of livestock or poultry. Infectious Salmon Anemia (ISA) poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States and abroad. ISA is the clinical disease resulting from infection with the ISA virus; signs include hemorrhaging, anemia, and lethargy. The Animal and Plant Health Inspection Service (APHIS) will collect information using VS Form 1–22 ISA Program Enrollment Form and VS Form 1–23 All Species Appraisal & Indemnity Claim Form.

Need and Use of the Information: Each program participant must sign an ISA Program Enrollment Form in which they agree to participate fully in USDA's and the State of Maine's ISA Program. APHIS will collect the owner's name and address, the number of fish for which the owner is seeking payment, and the appraised value of each fish. The owner must also certify as to whether the fish are subject to a mortgage. Without the information it would be impossible for APHIS to launch its program to contain and prevent ISA outbreaks in the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 16.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,421.

Animal and Plant Health Inspection Service

Title: Nomination Request Form; Animal Disease Training.

OMB Control Number: 0579–0353.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, eradicate pests or diseases of livestock or poultry. The Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent the introduction of animal diseases into the United States. The Professional Development Staff (PDS) of Veterinary Services within APHIS provides vital training to private veterinarians and State, Tribal, Industry, and university personnel which prepare them for animal disease response. To determine the need and demand for such courses, PDS must collect information from individuals who wish to attend training events facilitated by PDS.

Need and Use of the Information: Information will be collected from private veterinarians, State, Tribal, industry, and university personnel who desire to attend a PDS-sponsored training event. Prior to every PDS-facilitated event, respondents will submit a completed Nomination/Registration Request Form (VS Form 1–5) to the Regional Training Coordinators. Names, work addresses, work phone numbers, work email addresses, agency/organization affiliation, and job title as well as supervisor and region approval is needed to produce participant rosters once course selections are made. Without the collection of this information, PDS cannot conduct training events to educate Federal, State and private veterinarians on eradication of diseases and sample collection.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 30.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–1216 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 18, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Report of Acreage; Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0004.

Summary of Collection: 7 U.S.C. 7333(b)(3) specifically requires, for crops and commodities covered by the Noninsured Crop Disaster Assistance Program (NAP), annual reports of acreage planted and prevented from being planted must be reported, as required by the Secretary, by the designated acreage reporting data for the crop and location as established by the Secretary. The report of acreage is conducted on an annual basis and is used by the Farm Service Agency (FSA) county offices to determine eligibility for benefits that are available to producers on the farm. Respondents must provide the information each year because variables such as previous year experience, weather occurrences and projections, market demand, new farming techniques and personal preferences affect the amount of land being farmed, the mix of crops planted, and the projected harvest. Prior year information while useful is not sufficient on its own. Therefore, respondents must supply current data on a program year basis by the final reporting date established for their country to qualify for NAP assistance.

Need and Use of the Information: FSA will collect information verbally from the producers during visits to the county offices. FSA will collect one or more of the following data elements, as required: crop planted, planting date, crop's intended use, type or variety, practice (irrigated or non-irrigated), acres, location of the crop (tract and field), and the producer's percent share in the crop along with the names of other producers having an interest in the crop. Once the information is collected and eligibility established, the information is used throughout the crop year to ensure the producer remains compliant with program provisions. NAP requires crop, commodity, and acreage information collection on a program year basis. Failure to collect the data on that basis would result in program overpayments through producer ineligibility, incorrect acres, or incorrect shares of the crop.

Description of Respondents: Individuals or households.

Number of Respondents: 291,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 619,438.

Ruth Brown.

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–1217 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 17, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Food and Nutrition Service

Title: Quality Control Review Schedule.

OMB Control Number: 0584–0299.

Summary of Collection: States agencies are required to perform Quality Control (QC) review for the Supplemental Nutrition Assistance Program (SNAP). The FNS–380–1, Quality Control Review Schedule is for State use to collect both QC data and case characteristics for SNAP and to serve as the comprehensive data entry form for SNAP QC reviews. The legislative basis for the operation of the QC system is provided by Section 16 of the Food and Nutrition Act of 2008.

The proposed OMB inventory for the reporting and recordkeeping burdens associated with the FNS–380–1 is approximately 63,180.60 annual burden hours. This is a result of an increase in the current number of completed reviews and is also attributed to an increase in the recordkeeping burden because of a new recording requirement of all QC errors and error causing variances in QC final rule titled, ''Supplemental Nutrition Assistance Program: Quality Control Error Tolerance Threshold,'' Vol. 26, No. 211, Pg. 67315, which went into effect on January 3, 2012. The burden estimates were not included in the regulation when the rule was published because FNS did not have clearly defined burden estimates finalized. At this time, we developed a more accurate estimate of these burden requirements, which are reflected below.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. In addition, FNS will use the data to determine sanctions and bonus payments based on error rate performance, and to estimate the impact of some program changes to SNAP participation and costs by analyzing the available household characteristic data.

Description of Respondents: State, Local and Tribal Government.

Number of Respondents: 53.

Frequency of Responses: 2,257.74.

Estimated Total Burden Hours: 63,180.60.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–1159 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0035]

Codex Alimentarius Commission: Codex Committee on Pesticide Residues (CCPR)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), and the United States Environmental Protection Agency (EPA), are sponsoring a public meeting on February 14, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 44th Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (Codex), which will be held in Shanghai, P.R. China April 23–28, 2012. The Under Secretary for Food Safety and EPA recognize the importance of providing interested parties the opportunity to obtain background information on the 44th Session of the CCPR and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 14, 2012, from 1 p.m.–3 p.m.

ADDRESSES: The public meeting will be held at EPA, Room S–7100, One Potomac Yard South; 2777 South Crystal Drive, Arlington, Virginia 22202. Documents related to the 44th Session of the CCPR will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/*.

Lois Rossi, U.S. Delegate to the 44th session of the CCPR, and EPA, invite U.S. interested parties to submit their comments electronically to the following email address: *Rossi.Lois@epamail.epa.gov*.

Call-In Number

If you wish to participate in the public meeting for the 44th Session of the CCPR by conference call, please use the call-in numbers and participant codes listed below:

United States Call in Number: 1–(866) 299–3188.

United States Participant Code: (703) 305–6463.

International Call in Number: 1–(706) 758–1822.

International Participant Code: (703) 305–6463.

FOR FURTHER INFORMATION ABOUT THE 44TH SESSION OF THE CCPR CONTACT: Lois Rossi, Director of Registration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone: (703) 305–5447, fax: (703) 305–6920, email: *Rossi.Lois@epamail.epa.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, telephone: (202) 205–7760, fax: (202) 720–3157, email: *Doreen.Chen-Moulec@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCPR is responsible for establishing maximum limits for pesticide residues in specific food items or in groups of food; establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health; preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR); considering methods of sampling and analysis for the determination of pesticide residues in food and feed; considering other matters in relation to the safety of food and feed containing pesticide residues; and establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides, in specific food items or groups of food.

The CCPR is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 44th Session of the CCPR will be discussed during the public meeting:

- Matters Referred to the CCPR by Codex and Codex Committees
- Matters of Interest Arising from FAO and WHO
- Matters of Interest Arising from Other International Organizations
- Report on Items of General Consideration by the 2011 JMPR
- Report on the 2011 JMPR Responses to Specific Concerns Raised by the CCPR
- Draft and Proposed Draft Maximum Residue Limits (MRLs) for Pesticides in Foods and Feeds at Step 7 and 4
- Pilot Project for the JMPR Recommendation of MRLs before National Governments or Other Regional Registration Authorities for a Global Joint Review of a Chemical Substance
- Update on the Pilot Project and the Progress of the National Global Joint Review
- Draft Revision of the Codex Classification of Foods and Animal Feeds at Step 7: Fruit Commodity Groups (Excluding Edible Flowers and Assorted Tropical and Sub-tropical Fruits—Edible and Inedible Peel)
- Draft Revision of the Codex Classification of Foods and Animals at Step 7: Fruit Commodity Groups: Edible Flowers and Assorted Tropical and Sub-tropical Fruits Edible and Inedible Peel
- Proposed Draft Revision of the Codex Classification of Foods and Animal Feeds at Step 4: Selected Vegetable Commodity Groups
- Draft Principles and Guidance for the Selection of the Representative Commodities for the Extrapolation of MRLs for Pesticides for Commodity Groups at Step 7
- Discussion Paper on the Guidance to Facilitate the Establishment of MRLs for Pesticides for Minor Crops and Specialty Crops
- Revision of the Risk Analysis Principles Applied by the Codex Committee on Pesticide Residues
- Establishment of Codex Priority Lists of Pesticides
- Other Business and Future Work
- Discussion Paper on JMPR Resource Issues in the Provision of Scientific Advice to CCPR

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 14, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Lois Rossi, U.S. Delegate for the 44th Session of the CCPR (see **ADDRESSES**). Written comments should state that they relate to activities of the 44th Session of the CCPR.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on January 17, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–1160 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0034]

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), are sponsoring a public meeting on February 28, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 33rd Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex), which will be held in Budapest, Hungary, March 5–9, 2012. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 33rd Session of the CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 28, 2012, from 11 a.m. to 12:30 p.m.

ADDRESSES: The public meeting will be held at FDA, CFSAN, Harvey Wiley Building, Room 1A–002, 5100 Paint Branch Parkway, College Park, MD 20740. Documents related to the 33rd session of the CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/.*

Dr. Gregory O. Noonan, U.S. Delegate to the 33rd Session of the CCMAS, and FDA, invite U.S. interested parties to submit their comments electronically to the following email address: *Gregory.Noonan@fda.hhs.gov.*

Call-In Number

If you wish to participate in the public meeting for the 33rd Session of the CCMAS by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1–(888) 810–5908.
Participant code: 21317.

FOR FURTHER INFORMATION ABOUT THE 33RD SESSION OF THE CCMAS CONTACT: Gregory O. Noonan, Ph.D., Research Chemist, CFSAN, FDA, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740. Telephone: (240) 402–2250, fax: (301) 436–2634, email: *Gregory.Noonan@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Marie Maratos, U.S. Codex Office, 1400 Independence Avenue, Room 4861, Washington, DC 20250. Telephone: (202) 690–4795, fax: (202) 720–3157, email: *Marie.Maratos@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCMAS is responsible for defining the criteria appropriate to Codex Methods of Analysis and Sampling; serving as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories; specifying the basis of final recommendations submitted to it by other bodies; considering, amending, and endorsing, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives, do not fall within the terms of reference of this Committee; elaborating sampling plans and procedures; considering specific sampling and analysis problems submitted to it by Codex or any of its Committees; defining procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The Committee is hosted by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 33rd Session of the CCMAS will be discussed during the public meeting:

- Matters Referred to the Committee by Codex and Other Codex Committees

- Proposed Draft Principles for the Use of Sampling and Testing in International Food Trade
- Endorsement of Methods of Analysis Provisions in Codex Standards
- Provisions on the Use of Proprietary Methods in Codex Standards
- Report of an Inter-Agency Meeting on Methods of Analysis

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 28, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 33rd Session of the CCMAS, Gregory Noonan (see **ADDRESSES**). Written comments should state that they relate to activities of the 33rd Session of the CCMAS.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Done at Washington, DC, on January 17, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–1161 Filed 1–20–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rods From India: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on certain stainless steel wire rods from India would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* January 23, 2012.

FOR FURTHER INFORMATION CONTACT: Dustin Ross or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0747 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the Department initiated and the ITC instituted sunset reviews of the antidumping duty order on certain stainless steel wire rods (''wire rods'') from India,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011); *see also Stainless Steel Wire Rod From India; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Stainless Steel Wire Rod From India,* 76 FR 38686 (July 1, 2011).

As a result of this sunset review, the Department determined that revocation of the antidumping duty order on wire rods from India would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Certain Stainless Steel Wire Rods From India: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 76 FR 67672 (November 2, 2011).

On December 16, 2011, pursuant to section 752(a) of the Act, the ITC determined that revocation of the antidumping duty order on wire rods from India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Stainless Steel Wire Rod From India,* 77 FR 1504 (January 10, 2012), and ITC Publication entitled *Stainless Steel Wire Rod from India: Investigation No. 731–TA–638 (Third Review)* (January 2012).

Scope of the Order

The merchandise covered by the antidumping duty order is wire rods, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. Wire rods are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of wire rods sold in the United States are round in cross-section shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The wire rods subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and

[1] *Antidumping Duty Order: Certain Stainless Steel Wire Rods from India,* 58 FR 63335 (December 1, 1993).

7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on certain stainless steel wire rods from India.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

The five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: January 17, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–1246 Filed 1–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet Wednesday, February 8, 2012, from 8:30 a.m. to 5 p.m. Eastern Standard Time and Thursday, February 9, 2012, from 8:30 a.m. to 3 p.m. Eastern Standard Time. The VCAT is composed of fifteen members appointed by the Under Secretary of Commerce for Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Wednesday, February 8, 2012, from 8:30 a.m. to 5 p.m. Eastern Standard Time and Thursday, February 9, 2012, from 8:30 a.m. to 3 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 1401 Constitution Avenue NW., Washington, DC 20230. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1060, telephone number (301) 975–2667. Ms. Shaw's email address is *Stephanie.shaw@nist.gov*.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278.

The purpose of this meeting is to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST, a discussion on NIST and VCAT priorities for 2012, an overview of the President's FY 2013 total budget request for Science and Technology, and an update on the National Science and Technology Council's Subcommittee on Standards. Presentations and discussions will also cover NIST and Advanced Manufacturing, the Federal Risk and Authorization Management Program (FedRAMP), the National Cybersecurity Center of Excellence, and the National Strategy for Trusted Identities in Cyberspace National Program Office. The meeting will also include preparation and feedback sessions on observations, findings, and draft recommendations for the 2011 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On February 9, 2012, approximately one-half hour will be reserved in the morning for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the VCAT, National Institute of Standards and Technology, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at (301) 216–0529 or electronically by email to *gail.ehrlich@nist.gov*.

All visitors to the U.S. Department of Commerce Herbert C. Hoover Building site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Tuesday, January 31, 2012, in order to attend. Please submit your full name, time of arrival, email address, and phone number to Stephanie Shaw by close of business Tuesday, January 31, 2012. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address along with other data to be requested by Ms. Shaw. Ms. Shaw's email address is *stephanie.shaw@nist.gov* and her phone number is (301) 975–2667. Please note that due to security policies in place at the Hoover building, visitors are strongly encouraged not to bring laptop computers unless they can also verify proof of ownership.

Dated: January 17, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–1184 Filed 1–20–12; 8:45 am]

BILLING CODE 3510–13–P

[2] The merchandise subject to the scope of these orders was originally classifiable under all of the following HTS subheadings: 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080. HTSUS subheadings 7221.00.0020, 7221.00.0040, 7221.00.0060, 7221.00.0080 no longer exist.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA949

Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for February 7, 2012, 4–6 p.m., Eastern Daylight Time.

ADDRESSES: Conference call. Public access is available at 1311–B East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, (301) 427–8004; email: *Mark.Holliday@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and other information are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

The Committee is convening to prepare comments from MAFAC on the National Ocean Council's draft National Ocean Policy Implementation Strategy. This agenda is subject to change.

Dated: January 18, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–1263 Filed 1–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA440

National Policy for Distinguishing Serious From Non-Serious Injuries of Marine Mammals

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

ACTION: Notice of availability; response to comments.

SUMMARY: NMFS developed a final national policy, comprised of a Policy Directive and associated Procedural Directive, for distinguishing serious from non-serious injuries of marine mammals. The Directives provide technical guidance for analyzing marine mammal injury reports (*e.g.,* observer, disentanglement, and stranding program reports) and incorporating the results into marine mammal stock assessment reports and marine mammal conservation management regimes (*e.g.,* Marine Mammal Protection Act List of Fisheries, take reduction plans, ship speed regulations). NMFS is releasing its final Policy and Procedural Directives and responding to comments on the draft policy.

DATES: This final policy will be effective as of January 27, 2012.

ADDRESSES: The Policy and Procedural Directives for distinguishing serious from non-serious injuries of marine mammals, and NMFS' responses to public comments received on the draft Directives, may be viewed and downloaded at *http://www.nmfs.noaa.gov/pr/laws/mmpa/* under ''Policies, Guidances and Regulations''. Copies of the Policy and Procedural Directives may also be requested from Chief, Division of Marine Mammal and Sea Turtle Conservation, Office of Protected Resources, NMFS, 1315 East West Hwy, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Marine Mammal and Sea Turtle Conservation, Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION: The Policy Directive and associated Procedural Directive provide technical guidance for analyzing marine mammal injury reports and incorporating the results into marine mammal stock assessment reports and marine mammal conservation management regimes.

Dated: January 17, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–1261 Filed 1–20–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 77 FR 2710, Thursday, January 19, 2012.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, January 25, 2012, 10 a.m.–11 a.m.

Corrected Notice

TIME AND DATE: Wednesday, January 25, 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.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: January 19, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–1302 Filed 1–19–12; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0002]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 23, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, East Tower, 2nd Floor, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense Education Activity (Human Resources Regional Center), ATTN: Patti Ross, 4040 North Fairfax Drive, Arlington, VA 22203 or call at (703) 588–3915.

Title, and OMB Control Number: Department of Defense Dependents Schools (DoDDS) Employment Opportunities for Educators; DoDEA Forms 5010, 5011, and 5013 and OMB Number 0704–0370. DoDEA Form 5012 is being cancelled.

Needs and Uses: This information collection requirement is necessary to obtain information on prospective applicants for educator positions with the Department of Defense Dependents Schools. The information is used to verify employment history of educator applicants and to determine creditable previous experience for pay-setting purposes on candidates selected for positions. In addition, the information is used to ensure that those individuals selected for employment with the Department of Defense Dependents Schools possess the abilities which give promise of outstanding success under the unusual circumstances they will find working abroad. Completion of all forms is entirely voluntary.

Affected Public: Individuals or households.

Annual Burden Hours: 4,943.

Number of Respondents: 29,658.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The primary objective of the information collection is to screen applicants for educational qualification and employment eligibility, to obtain pertinent evaluation information about an applicant to assist management in making a hiring decision, and to obtain applicant consent to obtain personal information from former employer about applicants' employment.

The forms associated with this data collection include:

Department of Defense Dependents Schools Supplemental Application for Overseas Employment (DoDEA Form 5010). The primary objective of this voluntary form is to ascertain applicants' eligibility for educator positions.

Department of Defense Dependents Schools Professional Evaluation (DoDEA Form 5011). This form is provided to officials who served in managerial and supervisory positions above the applicant as a means of verifying abilities and qualifications of applicants for educator positions.

Department of Defense Dependents Schools Verification of Professional Educator Employment for Salary Rating Purposes (DoDEA Form 5013). The purpose of this voluntary form is to verify employment history of educator applicants and to determine creditable previous experience for pay-setting purposes.

The data collected on the DoDEA Forms 5010, 5011, and 5013 is covered by the DoDEA System of Records Notice at: *http://dpclo.defense.gov/privacy/SORN/govt/OPMGOVT-5.html,* ''Department of Defense Recruiting, Examining and Placement Records'' and *http://dpclo.defense.gov/privacy/SORN/govt/OPMGOVT-1.html* ''General Personnel Records.'' The paper forms and electronic data systems containing the sponsor and dependent personally identifying information are secured in accordance with the requirements of Federal law and implementing DoD regulations.

Dated: January 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1138 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0003]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 23, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management Systems Office, 4800 Mark Center Drive, Suite 02G09, East Tower, 2nd floor, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense

Education Activity (DoDEA), 4040 N. Fairfax Drive, 9th Floor, Arlington, VA 22203, ATTN: Dr. Sandra D. Embler or call (703) 588–3175.

Title, Associated Form and OMB Control Number: ''Department of Defense Education Activity (DoDEA) Non-Sponsored Research Program,'' DoDEA Form 2071.3–F1, OMB CONTROL NUMBER 0704–0457.

Needs and Uses: The Department of Defense Education Activity (DoDEA) is a DoD field activity operating under the direction, authority, and control of the Deputy Under Secretary of Defense, Military Community and Family Policy. The DoDEA operates 196 schools in 14 districts located in 12 foreign countries, seven states, Guam, and Puerto Rico.

The DoDEA receives requests from researchers to conduct non-DoDEA sponsored research studies in DoDEA schools, districts, and/or areas. To review the proposed research requests, DoDEA is seeking renewal for the DoDEA Administrative Instruction 2071.3 (DoDEA AI 2071.3) that includes DoDEA Form 2071.3–F1, ''Research Study Request.'' The DoDEA ''Research Study Request'' collects information about the researcher, the research project, audience, timeline, and the statistical analyses that will be conducted during the proposed research study.

This information is needed to ensure that the proposed non-DoDEA sponsored research does not unduly interfere with the classroom instructional process or the regular operations of the school, district, and/or areas.

Affected Public: Federal government; individuals or Households.

Annual Burden Hours: 30 hours.

Number of Respondents: 30.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DoDEA Administrative Instruction 2071.3 (DoDEA AI 2071.3) follows the DoD Directive 3216.2, ''Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research,'' March 25, 2002, which states that ''The rights and welfare of human subjects in research supported or conducted by the DoD Components shall be protected. This protection encompasses basic respect for persons, beneficence, and justice in the selection of subjects.'' To ensure that all non-DoDEA sponsored research conducted in the DoDEA school system protects the dignity, well-being, and confidentiality of any individual(s) involved in the research, including the rights guaranteed legally and constitutionally and by DoDEA policies, DoDEA created the DoDEA Form 2071.3–F1, ''Research Study Request'' that collects data that are used to review the proposed research study.

The ''Research Study Request'' is required from individuals or organizations who wish to propose data collection activities and/or research studies not sponsored by DoDEA, that involve DoDEA school personnel, school facilities, sponsors, students, and/or data. This documentation is required to show that the research does not unduly interfere with the classroom instructional process or the regular operations of the school, district, and/or areas. Information collected on the DoDEA Form 2071.3–F1 ''Research Study Request'' includes the researcher's name, address, telephone number, email address, FAX number (if available), school affiliation (if applicable), the study title, an abstract of the proposed study, an explanation on how the research study (1) is aligned with the DoDEA Community Strategic Plan, and (2) the impact of the study in the researcher's field of study, the major hypothesis(es) or question(s) to be tested, the population and/or sample to be studied, a description and copy of instruments, other data collection activities, the timetable for the study, and the statistical or other analysis techniques to be used during the study.

Dated: January 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1141 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0006]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 23, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, East Tower, 2nd Floor, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy)/ Accession Policy, ATTN: Major Justin DeVantier, or call (703) 695–5527.

Title, Associated Form, and OMB Control Number: Request for Reference, DD Form 370, OMB Control Number: 0704–0167.

Needs and Uses: DD Form 370 is used by recruiters to obtain reference information on applicants who have admitted to committing a civil or criminal offense. The respondents may provide information that would allow the applicant to be considered for a waiver and, therefore, continue with the application process.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 4,175 hours.

Number of Respondents: 25,000.

Responses per Respondent: 1.

Average Burden per Response: .167 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 370 is a form in which an applicant, who requests a waiver to enter the Armed Forces, may provide a reference from their respective school, agency, or individual. The school, agency, and/or individual shall complete and sign and date the questionnaire to confirm the information. The information provided by the referring person will assist in determining whether or not the applicant meets the eligibility standards to become a member of the Armed Forces of the United States.

Dated: January 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1144 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0005]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 23, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management Systems Office, 4800 Mark Center Drive, Suite 02G09, East Tower, 2nd floor, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense Education Activity (DoDEA), 4040 N. Fairfax Drive, 9th Floor, Arlington, VA 22203, ATTN: Dr. Sandra D. Embler or call (703) 588–3143.

Title and OMB Control Number: ''Department of Defense Education Activity (DoDEA) Sure Start Parent Questionnaire,'' OMB CONTROL NUMBER 0704–0456.

Needs and Uses: The Sure Start Parent Questionnaire is an instrument to measure the overall satisfaction level of parents of students enrolled in DoDEA Sure Start programs. This collection is necessary to meet the Government Performance and Results Act of 1993, Public Law 103–62; 107 Stat. 285, that requires agencies to have strategic plans and to consult with affected persons. A major purpose of the regulation is to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. The parent survey is also a required component of the annual evaluation of the Sure Start program as required by DoDEA.

Affected Public: Individuals or households.

Annual Burden Hours: 366.

Number of Respondents: 1100.

Responses per Respondent: 2.

Average Burden per Response: 10 minutes.

Frequency: Biannually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Education Activity (DoDEA) Sure Start Parent Questionnaire will be administered to all parents/sponsors of students enrolled in DoDEA Sure Start programs. Sure Start is the equivalent of pre-kindergarten but targets preschoolers who are ''at risk'' for later school failure because of economic circumstance or other health and/or family factors. In addition to offering a high-quality educational program that reflects best practices in the field, Sure Start also provides health and nutrition, social, and parent involvement services. Close collaboration between families, schools, and the installation community is viewed as essential and a required part of the program, to include parental feedback on the program. Participation in the survey is completely voluntary and will be administered via paper/hard copy format. All data are collected and analyzed at the school level only. The questionnaire will give parents/sponsors an opportunity to indicate their overall level of satisfaction with DoDEA Sure Start programs. The questionnaire will be administered biannually; typically in the middle of the school year and at the school year's end.

The information derived from these surveys will be used to improve service and planning efforts at school level. This information is one of many measures used for future planning of programs and services offered to DoDEA's students.

Dated: January 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1143 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0004]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 23, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management Systems Office, 4800 Mark Center Drive, Suite 02G09, East Tower, 2nd floor, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense Education Activity (DoDEA), 4040 N. Fairfax Drive, 9th Floor, Arlington, VA 22203, ATTN: Dr. Sandra D. Embler or call (703) 588–3143.

Title and OMB Control Number: ''Department of Defense Education Activity (DoDEA) School Perception Survey,'' OMB CONTROL NUMBER 0704–XXXX.

Needs and Uses: The DoDEA School Perception Survey is a tool used to measure the satisfaction level of sponsors and students with the programs and services provided by DoDEA. This collection is necessary to meet Department of Defense Reform Initiative Directive #23: Defense Agency Performance Contracts which states: ''The Directors of the specified Agencies and Field Activities will submit a performance contract covering the period of the Future Years Defense Plan (FYDP) FY 2006 through FY 2011. Each performance contract shall include measures of customer satisfaction with the goods and services provided by the Agency or Field Activity, including the timeliness of deliveries of products and services.'' The survey results will also be used to measure the goals and initiatives of the Community Strategic Plan.

Affected Public: Individuals or households.

Annual Burden Hours: 1,152.

Number of Respondents: 3,457.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: Biennially.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Education Activity (DoDEA) School Perception Survey for Sponsors and Students will be administered to all parents/sponsors of students attending a DoDEA school, as well as students in grades 3–12. Participation in the survey is completely voluntary and will be administered through an online, web-based technology. In order to have comparison between DoDEA parents and parents of students in other public school systems, some survey questions are derived from the Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward Schools and from other large districts. The questions will provide sponsors and students to comment on their overall perceptions of the DoDEA educational system as well as address DoDEA specific goals and initiatives as indicated in the Community Strategic Plan. The surveys will be administered biennially.

The survey results will be used at all levels of the organization to improve programs and services offered to DoDEA's students. The survey results will also be used as an outcome measure to monitor progress on the goals of the new DoDEA Community Strategic Plan.

Dated: January 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1142 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 22–23, 2012, at the Pentagon.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

DATES: February 22–23, 2012.

ADDRESSES: The Pentagon.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via email at *debra.rose@osd.mil,* or via phone at (703) 571–0084.

SUPPLEMENTARY INFORMATION: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Quarterly meetings will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1) and (4).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed in **FOR FURTHER INFORMATION CONTACT**, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: January 18, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1205 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0008]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice To Amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on February 22, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: January 18, 2012.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

S170.05

SYSTEM NAME:

Claims and Litigation Files (October 23, 2008, 73 FR 63139).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of the General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, and the General Counsel Offices at the Defense Logistics Agency Primary Level Field Activities. Addresses may be obtained from the System manager below.''

* * * * *

SAFEGUARDS:

Add sentence to end of paragraph ''All users of the records must complete Information Assurance Awareness and DoD PII Training annually.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel at the Defense Logistics Agency Primary Level Field Activity.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should include name of claimant/litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should include name of claimant/litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S170.05

SYSTEM NAME:

Claims and Litigation Files.

SYSTEM LOCATION:

Office of the General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, and the General Counsel Offices at the Defense Logistics Agency Primary Level Field Activities. Addresses may be obtained from the System manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities who have filed claims or litigation against the Defense Logistics Agency (DLA) or against whom DLA has initiated such actions. The system may also include claims and litigation filed against or on behalf of other federal agencies that are serviced by or receive legal support from DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records collected and maintained include record subject's name, home or business address, telephone numbers, details of the claim or litigation, and settlement, resolution, or disposition documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 2386, Copyrights, patents, designs, etc.; acquisition; 28 U.S.C. 514, Legal services on pending claims in departments and agencies; 28 U.S.C. 1498, Patents and copyright Cases; 31 U.S.C. chapter 37, Claims; and 35 U.S.C. chapter 28, Infringement of patent.

PURPOSE(S):

Records are used to represent DLA in claims and litigation.

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 of 1974, these records contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local agencies authorized to investigate, audit, act on, negotiate, adjudicate, represent, or settle claims or issues arising from litigation.

To agencies, entities, or individuals who have or are expected to have information concerning the claims or litigation at issue.

To the Internal Revenue Service for address verification or for matters under their jurisdiction.

To Federal, state, and local government agencies or other parties involved in approving, licensing, auditing, or otherwise having an identified interest in intellectual property issues.

To defense contractors who have an identified interest in intellectual property at issue.

The DoD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by record subject's name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours. All users of the records must complete Information Assurance Awareness and DoD PII Training annually.

RETENTION AND DISPOSAL:

Claim records are destroyed 6 years and 3 months after final settlement. Litigation files are destroyed 6 years after case closing except that patent infringement litigation files are destroyed after 26 years and copyright infringement files are destroyed after 56 years.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel at the Defense Logistics Agency Primary Level Field Activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should include name of claimant/litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should include name of claimant/litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Claimants, litigants, investigators, and through legal discovery under the Federal Rules of Civil Procedures.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–1239 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0007]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 13A, 19(b), and 27(a)(4) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

DATES: Comments on the proposed change must be received within 30 days of the date of this notice.

ADDRESSES: You may submit comments, identified by docket number and title by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

Dated: January 18, 2012.

Aaron Siegel,

Alternate OSD Federal Liaison Officer, Department of Defense.

Rule 13A

The proposed change to Rule 13A would add a new subparagraph (h) as follows:

(h) *Time Limitation.* An *amicus curiae* brief submitted under this Rule is not subject to the time limitation in Rule 26(b), but such brief shall be filed no less than 14 days before the scheduled date for oral argument. Both the appellant and the appellee may file a reply to such brief within 7 days of the filing thereof, subject to the limitations specified in Rule 24(b) and (c).

Comment: The proposed change to Rule 13A would provide that a brief submitted under the Student Practice Rule would not fall under the normal deadline for filing *amicus curiae* briefs provided in Rule 26(b) (requiring filing within 10 days of the filing of the brief of the party supported), but rather would be due for filing no less than 14 days before the scheduled date for oral argument. The proposal is intended to eliminate the problem posed in Project Outreach cases that are often selected and/or calendared well beyond the date for filing *amicus curiae* briefs. The

amended rule will allow these briefs to be timely filed.

The proposal would not apply only to Project Outreach cases. Rather, as a general matter, law school clinical programs do not operate continuously through the year and may only become aware of cases where they with to file an *amicus curiae* brief well after the brief can be timely filed. This rule will better allow these programs to file briefs with the Court and, thereby, the rules will facilitate this vital part of law school training for appellate advocates.

The proposed rule also gives the Court and the parties sufficient time to react to the student brief by requiring that it be filed no less than 14 days before oral argument and by allowing the parties the opportunity to respond within 7 days of the filing of the *amicus curiae* brief.

Rule 19(b)

The first sentences of Rule 19(b)(1), (2), and (3) currently read:

(b) Certificate for review/brief/answer/reply.

(1) *Article 62, UCMJ, cases.* In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(2) *Extraordinary relief cases.* In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals, or (b) no later than 30 days after a petition for grant of review is granted.

The proposed changes to the first sentences of Rule 19(b)(1), (2) and (3) would read:

(1) *Article 62, UCMJ, cases.* In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(2) *Extraordinary relief cases.* In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals, or (b) no later than 30 days after a petition for grant of review is granted.

Comment: Rule 19(b) currently allows 30 days for the filing of certificates for review by the Judge Advocate General, although a service member is given 60 days to file a petition for grant of review. Extension requests are filed in nearly all of the cases in which a certificate is to be filed, and the Rules Advisory Committee has determined that the 30 days allowed by this rule is insufficient time to obtain the necessary approvals and to file the certificate.

This change to 60 days will not apply in those cases where the Court grants a petition for grant of review, and the government wishes to request the Judge Advocate General to file a certificate for review. In that event, the Judge Advocate General will continue to have 30 days from the date the petition is granted to file the certificate for review. The 30-day deadline in these cases should not be extended because it will slow the processing of the case by the Court, and it will be less onerous because the case is already before the Court, making it easier for the services to determine whether they wish to bring additional issues before the Court in those cases.

Rule 27(a)(4)

The proposed change would delete Rule 27(a)(4) in its entirety:

(4) *Electronic message petitions.* The Court will not docket petitions for extraordinary relief submitted by means of an electronic message or by facsimile without prior approval of the Clerk.

Comment: This rule has become obsolete. It permits the filing of ''electronic message'' petitions for extraordinary relief with the permission of the Clerk. This provision contemplated the use of military message traffic or facsimile to file such petitions. However, with the use of the current electronic filing program, the filing of pleadings by military message or facsimile is no longer necessary.

[FR Doc. 2012–1187 Filed 1–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

DATES: *Date of Meeting:* February 7–8, 2012.

Place: Hearing Room, Kingman Building, 7701 Telegraph Road, Alexandria, VA 22315.

Time: 9 a.m. to 4:30 p.m. (February 7, 2012), 9 a.m. to 12 p.m. (February 8, 2012).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to COL Kevin J. Wilson, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: On Tuesday, February 7, the Executive Session is devoted to addressing the role of the Board on Coastal Engineering Research, including the history of the Board, discussion of the Board functions and responsibilities, and ways to enhance the value of the Board recommendations to the Chief of Engineers. The Board will also discuss the annual meeting and executive sessions formats.

On Wednesday morning, February 8, the Board will discuss pending action items.

The meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend is required.

Kevin J. Wilson,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 2012–1193 Filed 1–20–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Hold North Dakota Task Force Meeting as Established by the Missouri River Protection and Improvement Act of 2000 (Title VII)

AGENCY: Department of the Army, U.S Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: The duties of the Task Force are to prepare and approve a plan for the use of the funds made available under Title VII to promote conservation practices in the Missouri River watershed, control and remove sediment from the Missouri River, protect recreation on the Missouri River from sedimentation, and protect Indian and non-Indian historical and cultural sites along the Missouri River from erosion.

DATES: North Dakota Missouri River Task Force established by the Missouri River Protection and Improvement Act of 2000 will hold a meeting on February 28th from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Best Western Doublewood Inn located at 1400 East Interchange Avenue in Bismarck, ND.

FOR FURTHER INFORMATION CONTACT: Gwyn M. Jarrett at (402) 995–2717.

SUPPLEMENTARY INFORMATION: The objectives of the Task Force are to prepare and approve a plan for the use of the funds made available under Title VII, develop and recommend to the Secretary of the Army ways to implement critical restoration projects meeting the goals of the plan, and determine if these projects primarily benefit the Federal Government. Written requests may be sent to Gwyn M. Jarrett, U.S. Army Corps of Engineers, 1616 Capitol Avenue, Omaha, NE 68102–4901.

Dated: January 6, 2012.

Gwyn M. Jarrett,

Project Manager.

[FR Doc. 2012–1196 Filed 1–20–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L.104–13).

DATES: Interested persons are invited to submit comments on or before March 23, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 18, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Quick Response Information System (QRIS) 2012–2015 System Clearance.

OMB Control Number: 1850–0733.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Government.

Total Estimated Number of Annual Responses: 104,004.

Total Estimated Number of Annual Burden Hours: 31,704.

Abstract: The National Center for Education Statistics Quick Response Information System (QRIS) consists of the Fast Response Survey System (FRSS) and the Postsecondary Education Quick Information System (PEQIS). The QRIS currently conducts surveys under Office of Management and Budget generic clearance 1850–0733, which expires in September 2012. This submission requests approval to continue the current clearance conditions through 2015. FRSS primarily conducts surveys of the elementary/secondary sector (districts, schools) and public libraries. PEQIS conducts surveys of the postsecondary education sector. FRSS and PEQIS surveys are cleared under the QRIS generic clearance. The QRIS clearance is subject to the regular clearance process at OMB with a 60-day notice and a 30-day notice as part of the 120-day review period. Each individual FRSS or PEQIS survey is then subject to clearance process with an abbreviated clearance package, justifying the particular content of the survey, describing the sample design, the timeline for the survey activities, and the questionnaire. The review period for each individual survey is approximately 45 days, including a 30-day **Federal Register** notice period. OMB will provide comments as soon after the end of the 30-day notice period as possible. This generic clearance request is for surveys of state education agencies, school districts, schools, postsecondary institutions, and libraries. Surveys of teachers, students, commercial establishments, and households are not included in this request.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4777. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

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DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0004]

RIN 1810–AB14

Comprehensive Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed priorities, requirements, and selection criteria.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.283B.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) proposes priorities, requirements, and selection criteria under the Comprehensive Centers program. The Assistant Secretary may use these priorities, requirements, and selection criteria for competitions in fiscal year (FY or fiscal year) 2012 and later years. We intend to use the priorities, requirements, and selection criteria to provide Federal financial assistance to eligible applicants seeking to provide technical assistance to help State educational agencies (SEAs) build their capacity to implement State-level initiatives and to support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

DATES: We must receive your comments on or before February 22, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this notice of proposed priorities, requirements, and selection criteria, address them to Fran Walter, U.S. Department of Education, 400 Maryland Avenue SW., room 3W115, Washington, DC 20202–6132.

Privacy Note: The U.S. Department of Education's (Department) policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Fran Walter. Telephone: (202) 205–9198, or by email: *Fran.Walter@ed.gov.*

If you use a telecommunications device for the deaf (TDD), or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-(800) 877–8339.

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and selection criteria. Please let us know of any further opportunities we could take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and selection criteria in room 3W115, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Comprehensive Centers program supports the establishment of no fewer than 20 comprehensive technical assistance centers to provide technical assistance to SEAs that builds their capacity to support local educational agencies (LEAs or districts) and schools, especially low-performing districts and schools, improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

Program Authority: Title II, section 203, of the Education Technical Assistance Act of 2002 (ETAA).

I. Background

The Elementary and Secondary Education Act of 1965, as amended (ESEA), holds States accountable for closing achievement gaps and ensuring that all children, regardless of race, ethnicity, family income, English language proficiency, or disability, receive a high-quality education and meet challenging State academic standards.

The ETAA authorizes support for no fewer than 20 Comprehensive Centers to provide training, technical assistance, and professional development to SEAs, LEAs, regional educational agencies, and schools in the administration and implementation of programs under the ESEA. Under section 203(a)(2) of the ETAA, the Department is required to establish at least one center in each of the 10 geographic regions served by the Department's Regional Educational Laboratories (RELs). Resources for centers established under the ETAA are determined on the basis of the number of school-aged children in each region, the proportion of economically disadvantaged students in each region, the higher cost of service delivery in sparsely populated areas, and the number of schools identified for improvement under section 1116(b) of the ESEA in each region.

The Department conducted the initial competition under the ETAA in 2005 and made 5-year awards to 16 Regional Centers and 5 Content Centers. Each of the five Content Centers specialized in one of the following five areas: assessment and accountability, instruction, teacher quality, innovation and improvement, or high schools.

The 16 Regional Centers focused almost entirely on helping SEAs implement ESEA requirements and increase capacity to assist their districts and schools in meeting student achievement goals. Each of the five Content Centers identified and analyzed key research and provided in-depth information in its area of expertise to the Regional Centers and SEAs. The Content Centers have more recently emphasized assisting the Regional Centers in using publications and tools to support State reform efforts, typically through webinars, the creation and support of online communities of practice, and in-person assistance to both SEA and Regional Center staff.

In FYs 2010 and 2011, the Department extended the project period of the existing centers and negotiated new cooperative agreements with each center. These cooperative agreements retained the emphasis of the Regional Centers on building SEA capacity to support districts and schools in meeting student achievement goals. The agreements also retained the emphasis of the Content Centers on providing research-based publications and tools that include information, guidance, analyses, and services to inform the activities of the Regional Centers. At the same time, the agreements recognized that many States were initiating innovative reforms, such as adopting college- and career-ready standards, developing next-generation accountability systems, and implementing innovative mechanisms for improving teacher and leader effectiveness.

The Comprehensive Centers will provide technical assistance at a time when States, districts, and schools are moving forward with innovative approaches to significantly improve student outcomes and are implementing college- and career-ready standards and assessments; next-generation accountability systems that focus on turning around the lowest-performing schools and closing achievement gaps; and human capital management systems that support effective teachers and leaders.

The Department believes that the best way to support these State-led reforms, consistent with the requirements of both the ESEA and the ETAA, is to focus the Comprehensive Centers funded under this program on building SEA capacity. In particular, we believe the centers must focus on helping SEAs (1) create sustainable organizational structures and performance management systems that support key initiatives and help them set priorities for using their resources, (2) increase their ability to use those structures and systems to ensure that districts and schools are provided with high-quality services and supports, (3) support the implementation and scaling up of innovative and effective strategies in districts and schools, (4) identify and implement a continuum of supports and interventions to address the specific and varying needs of districts and schools, and (5) ensure the sustainability of State-led reforms.

Regional and Content Centers. The Comprehensive Centers competition would encompass both Regional Centers and Content Centers, retaining the program's two-tiered approach to helping SEAs build their capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction. Regional Centers would be the direct link to States. They would respond to States' needs by providing relevant technical assistance and expert advice and helping them implement, support, scale up, and sustain statewide reforms. Regional Centers would also make expert advice available to States from Content Centers, other Department-funded technical assistance providers, and other individuals and organizations. In addition, under the proposed priorities, requirements, and selection criteria, Regional Centers would be expected to have a broad understanding of the context and status of education reform in each of the States they serve and to maintain a regular and highly visible presence in the region. They would also be expected to develop strong relationships and partnerships within each State and across their regional communities that are likely to ensure the delivery of high-quality, relevant, and useful technical assistance.

The Department is proposing to further focus technical assistance from Regional Centers on key areas that correspond to State-led reforms already underway across the Nation: implementing college- and career-ready standards and aligned, high-quality assessments for all students; identifying, recruiting, developing, and retaining highly effective teachers and leaders; turning around the lowest-performing schools; ensuring the school readiness and success of preschool-age children and their successful transition to kindergarten-through-grade-three (K–3) learning; building rigorous instructional pathways that support the successful transition of all students from secondary education to college without the need for remediation, and to careers; identifying and scaling up innovative approaches to teaching and learning that significantly improve student outcomes; and using data-based decision-making to improve instructional practices, policies, and student outcomes.

In turn, the Content Centers funded under this program would work to increase the depth of knowledge and expertise available to Regional Centers and SEAs in key topic areas. Content Centers would complement the work of the Regional Centers by providing information, publications, tools, and specialized technical assistance based on research-based practices, as well as emerging promising-practices. Generally, research-based practices are practices that meet the strong or moderate evidence standards of the What Works Clearinghouse (*http://ies.ed.gov/ncee/wwc/*). Where strong or moderate evidence is not available on a topic, each center will explore emerging promising practices that could inform their technical assistance efforts. The Content Centers also would play a key role in improving efficiency in developing and disseminating technical assistance by, for example, avoiding the duplication and higher costs of parallel efforts by two or three Regional Centers.

To support these and other efforts, the Assistant Secretary is proposing in this notice funding priorities for seven Content Centers: (1) The Center on Standards and Assessments Implementation, (2) the Center on Great Teachers and Leaders, (3) the Center on School Turnaround, (4) the Center on Enhancing Early Learning Outcomes, (5) the Center on College and Career Readiness and Success, (6) the Center on Building State Capacity and Productivity, and (7) the Center on Innovations in Learning.

The Comprehensive Centers program represents a significant investment in technical assistance to SEAs. The Department is committed to supporting SEAs, districts, and schools as they work to implement their own reform priorities in the context of Federal program requirements. Therefore, the Department intends to have substantial and sustained involvement in the activities of all centers to ensure that they are responsive to State needs. The details and parameters of the Department's expectations and

involvement will be included in a cooperative agreement with each grantee.

Regional Advisory Committees. To help inform the priorities that we are proposing under this program, the Secretary of Education (the Secretary) (in accordance with section 206 of the ETAA) in 2011 established 10 Regional Advisory Committees (RACs) charged with conducting educational needs assessments within the geographic regions served by the current RELs.

The RACs conducted their needs assessments from June 2011 to August 2011 and submitted their reports to the Secretary on November 15, 2011. The full reports are available at: *http://www2.ed.gov/programs/newccp/resources.html.*

Potential applicants for the centers are encouraged to consider the specific educational needs assessment results and recommendations contained in the RAC reports when preparing their applications.

II. Proposed Priorities

This notice contains nine proposed priorities. The Assistant Secretary may use one or more of these priorities for the FY 2012 Comprehensive Centers program competition or for any subsequent competitions. We may choose in the notice of final priorities, requirements, and selection criteria to include the substance of these priorities in the selection criteria.

Proposed Priority for Regional Centers

Proposed Priority 1: Regional Centers. Each Regional Center must provide high-quality technical assistance that focuses on key initiatives, aligns with the work of the Content Centers, and builds the capacity of SEAs to implement, support, scale up, and sustain initiatives statewide and to lead and support their LEAs and schools in improving student outcomes. Key initiatives include: (1) Implementing college- and career-ready standards and aligned, high-quality assessments for all students; (2) identifying, recruiting, developing, and retaining highly effective teachers and leaders; (3) turning around the lowest-performing schools; (4) ensuring the school readiness and success of preschool-age children and their successful transition to kindergarten; (5) building rigorous instructional pathways that support the successful transition of all students from secondary education to college without the need for remediation, and careers; (6) identifying and scaling up innovative approaches to teaching and learning that significantly improve student outcomes; and (7) using data-based decision-making to improve instructional practices, policies, and student outcomes.

Proposed Priorities for Content Centers

Proposed Priority 2: Center on Standards and Assessments Implementation. The Center on Standards and Assessments Implementation must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in implementing rigorous college- and career-ready standards and aligned high-quality assessments.

Proposed Priority 3: Center on Great Teachers and Leaders. The Center on Great Teachers and Leaders must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in improving student outcomes by supporting effective instruction and leadership.

Proposed Priority 4: Center on School Turnaround. The Center on School Turnaround must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in turning around their lowest-performing schools.

Proposed Priority 5: Center on Enhancing Early Learning Outcomes. The Center on Enhancing Early Learning Outcomes must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to implement comprehensive and aligned preschool-to-third-grade early learning systems in order to increase the number of children from birth to third grade who are prepared to succeed in school.

Proposed Priority 6: Center on College and Career Readiness and Success. The Center on College and Career Readiness and Success must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support districts and schools in implementing comprehensive strategies that promote college- and career-readiness for students in kindergarten through grade 12 (K–12) and ensure the successful transition of all students from high school graduation to postsecondary education and the workforce.

Proposed Priority 7: Center on Building State Capacity and Productivity. The Center on Building State Capacity and Productivity must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will increase the capacity of SEAs to implement their key initiatives statewide and support district- and school-level implementation of effective practices to improve student outcomes.

Proposed Priority 8: Center on Innovations in Learning. The Center on Innovations in Learning must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to identify and scale up innovative approaches that significantly improve, or have the potential to significantly improve, student outcomes.

Proposed Priority for All Centers

Proposed Competitive Preference Priority 9: Cost-Sharing or Matching.

Background: Many national, regional, and local foundations, civic organizations, and corporations are currently investing in building SEA and district capacity to implement comprehensive education reforms. We believe that combining the Department's efforts and resources with these external efforts and resources will help increase and extend the reach of the Comprehensive Centers program. Therefore, we are proposing a competitive preference priority for applicants that provide evidence of a commitment from a partner or partners of funds or an in-kind match, or both, that totals at least 15 percent of the total grant budget. The Department believes that applicants who partner with these types of private or public entities and secure a financial or in-kind commitment of at least 15 percent of their proposed budget will be in a better position to support States in building their capacity.

Proposed Competitive Preference Priority 9: To meet this priority, an applicant must provide evidence in the application of a commitment of a matching contribution, in funds or in kind, or both, of at least 15 percent of its total grant budget from one or more entities or organizations in the public or private sector, which may include philanthropic organizations. The entire amount of the matching contribution must be non-Federal funds. See 34 CFR 80.24. Evidence of the commitment of the financial or in-kind matching contribution must include the full

amount and source of the matching contribution, and the date that the funds or in-kind contributions will be received. Examples of such evidence include funding agreements with a public or private-sector entity, or other signed documents such as commitment letters. The evidence should not include contingencies that raise concerns about the funding commitment other than that the applicant must be awarded a Comprehensive Centers grant award. An award will not be made unless the applicant provides evidence that the full amount of the match has been committed.

If an applicant provides evidence of matching funds or in-kind contributions in excess of 15 percent of its grant budget, an applicant may receive additional points. Additional points may be awarded to the extent that the applicant provides evidence of a committed financial or in-kind matching contribution up to 100 percent of its grant budget. The Department will specify in the notice inviting applications the number of points to be awarded for specific ranges of matching amounts.

Types of Priorities

When inviting applications for a competition using one or more priorities, and unless already established as a specific type of priority through regulation, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

III. Proposed Comprehensive Center Requirements

A. Proposed Requirements for All Centers

1. *Provide high-quality technical assistance.* Each center must deliver technical assistance that is based on research-based practices and emerging promising practices; highly relevant and useful to SEAs, LEAs, and school policymakers and practitioners; timely; and cost efficient.

2. *Provide technical assistance to build State capacity.* Each center must provide technical assistance to help SEAs build their capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

For the purposes of this notice, the process of ''building capacity'' includes helping SEAs—

a. Build internal organizational strength through such activities as creating sustainable organizational structures and effective performance management systems, building staff expertise within those structures to ensure that districts and schools are provided high-quality services and supports, and better aligning programs and policies through strengthening connections (*e.g.,* communication, collaboration) among different work streams (*e.g.,* divisions, grant programs); and

b. Build organizational capacity to support district- and school-level implementation of effective practices to improve student outcomes—for example, by working collaboratively and productively with districts and schools; identifying and implementing a continuum of supports and interventions to address the needs of districts and schools; supporting the implementation and scaling up of innovative and effective strategies; sustaining effective practices; engaging effective external service providers; and involving key stakeholders, including parents, in decisionmaking.

3. *Coordination and Collaboration.* In addition to the statutory requirement under section 203(f)(2) of the ETAA to collaborate with the Department and other entities, each center must collaborate with other Comprehensive Centers funded under this program; the Institute of Education Sciences (IES), including the What Works Clearinghouse and the RELs; technical assistance centers funded under other Department programs; and other technical assistance providers to address SEA needs. Each center must—

a. Develop strong, ongoing relationships and partnerships with leading experts and organizations nationwide to supplement and enhance, as appropriate, center staff's expertise, skills, and experience and to ensure that technical assistance is informed by research-based practices and emerging promising practices;

b. Coordinate center activities with the work of other technical assistance providers to make the best use of available knowledge and resources and avoid duplicating efforts; and

c. Participate in sharing and exchanging information through a common online portal administered by a center funded by the Department for the purpose of sharing technical assistance expertise, materials, and other applicable resources across Comprehensive Centers, other Department-funded technical assistance providers, SEAs, districts, and schools.

4. *Evaluation.* Each center must develop a plan to engage a third party to assess the progress and performance of the center in meeting the educational and capacity-building needs of the center's clients.

B. Proposed Requirements for All Regional Centers

In addition to the requirements for all centers described in this notice, each Regional Center must—

1. Assess each State's needs and develop an annual work plan in partnership with each SEA in its region and the Content Centers, as appropriate, that—

a. Provides technical assistance to build SEA capacity to implement, support, scale up, and sustain initiatives that address the following key areas: (1) Implementing college- and career-ready standards and aligned, high-quality assessments for all students; (2) identifying, recruiting, developing, and retaining highly effective teachers and leaders; (3) turning around the lowest-performing schools; (4) ensuring the school-readiness and success of preschool-age children and their successful transition to K–3 learning; (5) building rigorous instructional pathways that support the successful transition of all students from secondary education to college, without the need for remediation, and to careers; (6) identifying and scaling up innovative approaches to teaching and learning that significantly improve, or have potential to significantly improve, student outcomes; and (7) using data-based decisionmaking to improve instructional practices, policies, and student outcomes;

c. Addresses the needs of each SEA in the region based on the SEA's unique context, challenges, and current capacity;

d. Articulates the commitment by the center and the SEA to devote time, leadership, and personnel needed to implement the work plan;

e. Addresses the demands of implementing integrated State longitudinal data systems and using data from these systems and other sources to improve student outcomes, in collaboration with RELs, as appropriate; and

f. Addresses the needs of all students, including English Learners, students with disabilities, and low-achieving students;

2. Deliver high-quality intensive technical assistance to SEAs that—

a. Provides regular virtual and on-site support and coaching at a frequency appropriate to ensuring high-quality implementation of the work plan;

b. Facilitates collaborative activities and strategies for evaluating and continuously improving organizational structures and processes;

c. Draws on the expertise of the Center on Building State Capacity and Productivity;

d. Facilitates productive SEA interactions with LEAs and other stakeholders to support implementation of key initiatives focused on improving student outcomes;

e. Helps SEAs implement researched-based practices and emerging promising practices identified by the Content Centers and other leading experts and organizations nationwide; and

f. Provides opportunities for SEAs to meet with and learn from researchers, experts, and each other about practical and effective strategies for implementing key initiatives, including by, for example, organizing or facilitating SEA participation in communities of practice; and

3. Make all training materials, rubrics, manuals, presentations, and other materials developed during the grant period publicly and freely available through the online portal described in the coordination and collaboration requirement for all centers.

Note: The requirements for all Regional Centers do not support the development of new content. A Regional Center applicant will not satisfy these requirements if it proposes a technical assistance plan that includes development work, such as designing or developing curricula or instructional materials for use in classrooms, developing educational programs, or conducting research, monitoring, or program evaluations for an SEA. A Regional Center may propose to create materials to be used in capacity-building activities with the SEA, such as decision matrices, written responses to information requests, self-assessment rubrics, or presentation materials. In addition, to the extent that an applicant proposes to work with individual school districts or schools, the applicant must propose technical assistance that reaches a large number or proportion of districts or schools in the State, responds to a need identified by an SEA, and is planned, coordinated, and executed in concert with the SEA.

C. Proposed Requirements for All Content Centers

In addition to the proposed requirements for all centers described in this notice, each Content Center must—

1. Assess national needs and develop an annual work plan that—

a. Takes into account the needs of SEAs and Regional Centers in its area of expertise;

b. Addresses its specific area of expertise; and

c. Addresses the needs of all students, including English Learners, students with disabilities, and low-achieving students;

2. Deliver high-quality technical assistance to Regional Centers and SEAs in its area of expertise that—

a. Reflects collaboration with Regional Centers to address identified needs of SEAs;

b. Provides opportunities for SEAs to learn from researchers, experts, and each other by, for example, participating in, organizing, or facilitating SEA participation in communities of practice; and

c. Differentiates the delivery of technical assistance based on the current capacity and needs of the Regional Centers and SEAs;

3. Translate expertise, research-based practices and emerging promising practices into high-quality publications, tools, and services appropriate for SEAs, LEAs, and school policymakers and practitioners; and

4. Make all training materials, rubrics, manuals, presentations, and other materials developed during the grant period publicly and freely available through the online portal described in the coordination and collaboration requirement for all centers.

D. Proposed Requirements for the Center on Standards and Assessments Implementation

In addition to the proposed requirements for all centers and for all Content Centers described in this notice, the Center on Standards and Assessments Implementation must provide technical assistance to Regional Centers and SEAs that focuses on—

1. State implementation of college- and career-ready standards for students and schools statewide, as well as State development and administration of aligned high-quality assessments such as those under development by the Race to the Top Assessment program grantees (*http://www.2.ed.gov/programs/racetothetop-assessment/index.html*) and by General Supervision Enhancement Grants (GSEG) program grantees, who are developing alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities;

2. The instructional implications of transitioning to new standards, including the need for aligned, high-quality instructional materials and high-quality professional development and other supports to prepare teachers to teach all students, including English Learners, students with disabilities, and low-achieving students, to college- and career-ready standards;

3. Integrating new standards and assessments with State accountability systems and State, district, and school teacher and leader support and evaluation systems; and

4. Using assessment data and other measures of student performance to inform instruction, differentiate school performance levels, and evaluate district and school improvement policies and activities.

E. Proposed Requirements for the Center on Great Teachers and Leaders

In addition to the proposed requirements for all centers and for all Content Centers described in this notice, the Center on Great Teachers and Leaders must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Developing the knowledge and skills of teachers and leaders, with emphasis on improving instructional practices that help students meet college- and career-ready standards;

2. Strategies to ensure the equitable distribution of effective teachers and to meet demand in hard-to-staff schools and subjects and in rural areas;

3. Strategies to recruit, reward, retain, and support effective teachers and leaders by, for example, offering opportunities for career advancement;

4. Developing and implementing teacher and leader human capital management systems (*e.g.,* systems related to recruiting, evaluating, developing, rewarding, and retaining teachers and leaders), including teacher and leader evaluation and support systems that use multiple valid measures of effectiveness (including

student growth and other measures of professional performance), differentiate performance levels, inform professional development needs, and focus on continuously improving instruction for teachers in both tested and non-tested grades and subjects, including teachers of English learners and students with disabilities; and

5. Using data from human capital management systems, State longitudinal data systems, and other sources to guide professional development and improve instruction.

F. Proposed Requirements for the Center on School Turnaround

In addition to the proposed requirements for all centers and for all Content Centers described in this notice, the Center on School Turnaround must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Developing and strengthening organizational systems and structures that promote and sustain comprehensive district and school reforms that lead to significant gains in student outcomes and close achievement gaps in the lowest-performing schools;

2. Developing effective tools, processes, and policies for States to monitor and support district and school efforts to turn around the lowest-performing schools; the tools, processes, and policies could include ways to select and monitor external providers, support and develop turnaround leaders, and analyze and use data;

3. Collecting and disseminating information and resources on successful school turnaround models;

4. Collecting and disseminating information and resources on promising and emerging State, district, and school approaches to: (a) Improving student outcomes and closing achievement gaps, (b) addressing non-academic factors that impact student achievement, such as students' social, emotional, and health needs, and (c) sustaining improvements across a broad spectrum (*e.g.,* urban, rural, high-poverty) of the lowest-performing schools and across student populations (*e.g.,* English Learners, students with disabilities); these approaches may include extending learning time; and

4. Facilitating support networks and ongoing learning opportunities for SEAs, LEAs, and school policymakers and practitioners serving the lowest-performing schools, which may include managing and supporting an online community of practice.

G. Proposed Requirements for the Center on Enhancing Early Learning Outcomes

In addition to the proposed requirements for all centers and for all Content Centers, the Center on Enhancing Early Learning Outcomes must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Aligning preschool and K–3 education policies and systems in order to increase successful transitions as children enter kindergarten and to close the achievement gap, particularly for children with high needs;

2. Increasing knowledge and expertise among SEA staff and among State-level early learning program staff in understanding the purposes and uses of a full range of early childhood assessment strategies and instruments and in selecting assessment instruments and approaches that are appropriate for all children, including English Learners, students with disabilities, and low-achieving students;

3. Using assessment data and other information to improve the quality of instruction in early learning programs;

4. Increasing the effectiveness of the early learning workforce—for example, by assisting SEAs in developing and implementing statewide workforce knowledge and competency frameworks designed to support children's learning and development and improve outcomes; supporting more robust early childhood educator preparation and professional development efforts; and developing a common, statewide progression of teaching credentials and degrees aligned with the State frameworks; and

5. Working to integrate and align resources and policies across State agencies and programs to support a coordinated statewide system that promotes children's success in school.

H. Proposed Requirements for the Center on College and Career Readiness and Success

In addition to the proposed requirements for all centers and for all Content Centers described in this notice, the Center on College and Career Readiness and Success must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Policies and practices that—

a. Support the successful transition of all students from secondary education to college, without the need for remediation, and to careers; and

b. Increase postsecondary enrollment, persistence, and completion—for example, by assisting SEAs in aligning secondary and postsecondary learning expectations, strengthening the rigor of high school courses and pathways, and providing college counseling;

2. SEA development and scaling up of statewide rigorous career and technical education (CTE) programs that align with college- and career-ready standards and lead to an industry-recognized credential or postsecondary certificate or degree—for example, by implementing high-quality, academically rigorous CTE programs and courses; providing high school credits for work-based learning opportunities; providing college credit for secondary school academic and technical courses through statewide secondary-postsecondary articulation agreements; implementing career counseling services that incorporate the most up-to-date information on existing and emerging in-demand industry sectors and occupations; and aligning CTE programs and priorities with State and local economic development strategies, industry standards in existing and emerging in-demand industry sectors and occupations, and job growth data;

3. High-quality science, technology, engineering, and mathematics (STEM) instruction that supports and challenges students through a progression of STEM courses and the transition to postsecondary degree and certificate programs in STEM fields;

4. Implementing accelerated learning strategies such as dual-credit and early college options, General Educational Development (GED)-to-college pathways, competency-based pathways, and other programs designed to encourage and support the successful transition of all students, especially disadvantaged and first-generation college-going students, dropouts who re-enter school, and students with disabilities, from secondary school into postsecondary education or training programs; and

5. Effectively using data—for example, using early warning and college- and career-readiness indicators to identify secondary school students needing additional support, or implementing approaches, consistent with Federal, State, and local privacy laws and regulations, to allow data to be shared between LEAs and postsecondary institutions to improve student transitions.

I. Proposed Requirements for the Center on Building State Capacity and Productivity

In addition to the proposed requirements for all centers and for all Content Centers described in this notice,

the Center on Building State Capacity and Productivity must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Building the internal organizational capacity of SEAs by—

a. Supporting the implementation of sustainable organizational structures and effective performance management systems that help SEAs support key education initiatives and set priorities for using their resources;

b. Helping SEAs build their staffs' leadership skills and expertise so that staff can effectively lead and support education initiatives and ensure that districts and schools are provided with high-quality services and supports;

c. Helping SEAs strengthen information sharing across organizational units within SEAs in order to facilitate cross-cutting work that increases the success of State- and district-level initiatives designed to improve student outcomes and that enhances the sustainability of these initiatives;

d. Helping SEAs make more efficient use of scarce resources—for example, by measuring and comparing the costs of similar systems, processes, programs, and products; and

e. Identifying State- and district-level research-based practices and emerging promising practices in such areas as human capital management, financial data systems, and return-on-investment analyses that can inform decision making and help SEAs improve productivity and reduce costs across classrooms, schools, districts, and States; and

2. Building the organizational capacity of SEAs to support district- and school-level implementation of initiatives designed to improve student outcomes by helping SEAs—

a. Build collaborative and productive relationships with their LEAs; provide technical assistance that builds the capacity of its LEAs; facilitate the sharing of research-based practices, emerging promising practices, and problem-solving strategies among LEAs; and identify ways in which the SEA can help its LEAs scale up effective practices;

b. Identify and implement a continuum of supports and interventions to address the needs of districts and schools;

c. Develop processes to identify and select effective external partners and monitor their progress in achieving stated goals and objectives; and

d. Engage and provide information to key stakeholders, including parents, on the implementation of key initiatives.

J. Proposed Requirements for the Center on Innovations in Learning

In addition to the proposed requirements for all centers and for all Content Centers described in this notice, the Center on Innovations in Learning must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Identifying and implementing policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that significantly improve, or have the potential to significantly improve, student outcomes—for example, through analyzing State and district data to identify positive trends or unique patterns that indicate significant improvement, or the potential for significant improvement, in student outcomes; helping States use competitions to identify the most promising innovations; helping States rigorously evaluate promising innovations; and supporting States' broad adoption of the most promising and proven innovations and the replacement of less effective programs and practices;

2. Identifying and implementing policies, strategies, and practices that encourage improved student outcomes through personalization of learning for each student—for example, by helping SEAs, LEAs, and schools provide opportunities for self-paced learning, implement instructional approaches and subject matter matched to students needs and interests, and increase access to experts, teachers, and peers who can address specific student needs and interests;

3. Selecting and implementing technologies that support the personalization of learning—for example, (a) data systems that allow teachers to better differentiate instruction and instructional resources for maximum effectiveness and (b) adaptive instructional systems that enable students to optimize the pace of learning and individualize the instructional content they need to achieve mastery;

4. Using State and local data systems to identify specific areas of student need and evaluate the effectiveness of specific strategies that support innovations in learning—for example, practices that improve student learning outcomes, that increase the number of individuals served without increasing resources, or that maintain educational outcomes and the number of students served while using fewer resources; and

5. Identifying and implementing policies and practices that accelerate the adoption of promising and proven personalized learning strategies, practices, and tools.

K. Proposed Application Requirements

1. Technical Assistance Plan

An applicant for a Regional Center must submit as part of its application a five-year plan of technical assistance that describes how it will meet the program requirements for all centers and for Regional Centers. An applicant for a Content Center must submit as part of its application a five-year plan of technical assistance that describes how it will meet the program requirements for all centers, the general requirements for all Content Centers, and the applicable Content Center requirements described in this notice.

2. Subject-Matter and Technical Expertise

An applicant for a Regional or Content Center must provide a narrative describing the subject-matter and technical expertise of proposed center staff, including any partners and consultants. At a minimum, the narrative must include the names and resumes for the proposed center staff.

a. *All Centers.* An applicant for a Regional or Content Center must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of the research-based practices and emerging promising practices that will enable the applicant to provide high-quality technical assistance specifically related to building SEA capacity to implement State-level initiatives and to support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction; and

ii. Experience in the following:

(a) Delivering high-quality, relevant technical assistance and sharing expertise with SEAs or multiple districts. An applicant must provide evidence of the effect that its technical assistance has had on SEAs or LEAs, such as improved student outcomes, increased organizational capacity, the establishment of effective structures or processes, or high levels of client satisfaction.

(b) Supporting SEAs or multiple districts in implementing key initiatives and in making systemic changes beyond individual districts or schools.

(c) Building collaborative relationships with leading experts and

organizations in applicable areas of expertise to increase the quality, relevance, and usefulness of technical assistance.

b. *Regional Centers.* In addition to the subject-matter and technical expertise outlined for all center applicants, an applicant for a Regional Center must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) The context and status of education reform in each of the States the applicant would serve;

(b) Leading research on implementing educational initiatives and practices and on how to help SEAs implement, support, scale up, and sustain practices that address identified problems;

(c) LEA support systems within States the applicant would serve, such as networks of educational service agencies and third-party systems of support, and how to use those systems to provide high-quality support to districts and schools; and

ii. Experience in the following:

(a) Working with SEAs or multiple districts to implement comprehensive or innovative plans to improve student achievement or provide large-scale technical assistance focused on improving student outcomes.

(b) Developing and implementing performance and project management systems on a large scale or in large, complex, public-sector institutions.

(c) Facilitating communities of practice within and across States.

c. *Center on Standards and Assessments Implementation.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Standards and Assessments Implementation must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) The Common Core State Standards and other college- and career-ready standards that States have adopted, including detailed knowledge and understanding of the differences in expectations embedded in these standards compared to those embedded in current State standards;

(b) The work of the Smarter Balanced assessment consortium and the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment consortium, as well as other State-developed assessments that are linked to college- and career-ready standards, including assessment designs and the status of efforts to develop and pilot the new assessments; and

(c) Instructional strategies and high-quality curricula that are aligned with rigorous college- and career-ready standards and support the teaching and learning of all students, including English Learners, students with disabilities, and low-achieving students; and

ii. Experience in the following:

(a) Working successfully with SEAs or multiple districts on the implementation of new standards or assessments.

(b) Working with experts and practitioners involved in college- and career-ready assessment efforts supported by States, such as the Smarter Balanced or PARCC assessment consortia.

(c) Working with SEAs or multiple districts in aligning curricular and instructional options, as well as teacher and leader professional development, with new, more rigorous standards.

(d) Working with SEAs, LEAs, or school policymakers and practitioners on the interpretation and appropriate use of assessment data.

d. *Center on Great Teachers and Leaders.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Great Teachers and Leaders must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) Teacher and leader professional development that improves instruction and helps students meet college- and career-ready standards;

(b) Strategies to improve teacher and leader recruitment and retention;

(c) Designing or improving teacher and leader human capital management systems, including teacher and leader evaluation and support systems, that are based in significant part on student growth, differentiate performance, include multiple measures of effectiveness, inform professional development, and focus on continuous improvement of instruction; and

(d) The broad range of SEA and district teacher and leader human capital management systems, State policies that facilitate or hinder the development of such high-quality systems, and possible barriers to the equitable distribution of effective teachers and leaders; and

ii. Experience in the following:

(a) Working successfully with SEAs or multiple districts on improving the quality of instruction statewide or across multiple districts.

(b) Working collaboratively with teacher and leader preparation organizations, institutions of higher education, charter management organizations, or other teacher and leader preparation and development groups to develop, implement, or improve teacher and leader human capital management systems, including teacher and leader evaluation and support systems.

e. *Center on School Turnaround.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on School Turnaround must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) The approaches States, districts, and schools are taking to turn around their lowest-performing schools, including efforts under the School Improvement Grants and Race to the Top programs; and

(b) Emerging promising practices, including non-academic practices that impact student outcomes, for improving student outcomes in the lowest-performing schools, particularly those engaged in school turnaround efforts; and

ii. Experience working with SEAs or multiple districts on school turnaround efforts, including helping SEAs or multiple districts develop and implement structures or systems that promote and sustain comprehensive district and school reforms and processes and tools to monitor turnaround efforts.

f. *Center on Enhancing Early Learning Outcomes.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Enhancing Early Learning Outcomes must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) State early learning and development standards that define what children should know and be able to do from birth through third grade;

(b) Principles and approaches to appropriately assess young children's knowledge and skills from birth through third grade, including expertise in the field of psychometrics; and

(c) The issues related to improving the workforce serving children from birth through third grade, including issues related to workforce competencies, certifications, and compensation; and

ii. Experience in the following:

(a) Providing technical assistance to SEAs or multiple districts on selecting, using, and interpreting the results of early childhood assessments.

(b) Assisting SEAs or multiple districts on building an effective early childhood workforce.

g. *Center on College and Career Readiness and Success.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on College and Career Readiness and Success must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possess—

i. Knowledge and understanding of—

(a) Research-based practices and emerging promising practices that support the successful transition of all students from secondary education to college, without the need for remediation, and to careers;

(b) Rigorous career and technical education programs of study that align with college- and career-ready standards; and

(c) High-quality STEM instructional pathways that lead to a postsecondary degree or certification in STEM fields; and

ii. Experience in the following:

(a) Working with SEAs or multiple districts to design and implement systemic, comprehensive strategies that promote college- and career-readiness for K–12 students and students' successful transition from high school graduation to postsecondary education and the workforce.

(b) Helping SEAs address the systemic needs and challenges they and their LEAs face in ensuring that all students graduate from high school prepared for college and careers, particularly in high-poverty, high-minority, urban, and rural settings.

(c) Working with K–12 and postsecondary education systems to align policies and practices in order to improve student transitions from high school to postsecondary degree or credential programs.

h. *Center on Building State Capacity and Productivity.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Building State Capacity and Productivity must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) SEA organizational structures that are effective in supporting district- and school-level implementation of effective practices to improve student outcomes;

(b) The relationship of an SEA to its LEAs and the differing resources and capacities that exist across LEAs;

(c) Research-based practices and emerging promising practices in using LEA support systems in States, such as networks of educational service agencies and third-party systems of support, in order to provide high-quality support to districts and schools; and

(d) Leading research in performance and project management, including research conducted in non-education sectors and industries; and

ii. Experience in the following:

(a) Working with SEAs to successfully implement programs or initiatives statewide or in multiple districts.

(b) Providing in-depth coaching and advice to SEA leaders on improving internal organizational capacity or the capacity to support district- and school-level implementation of effective practices in order to improve student outcomes.

(c) Facilitating communities of practice within and across States.

(d) Working with large-scale organizations, especially public-sector organizations that work with multiple constituencies and stakeholders, on performance and project management.

i. *Center on Innovations in Learning.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Innovations in Learning must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) Policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that significantly improve, or have the potential to significantly improve, student outcomes; and

(b) Policies, strategies, and practices that encourage improved student outcomes through personalization of learning and through implementing technologies that support the personalization of learning; and

ii. Experience in the following:

(a) Working with SEAs on identifying and implementing policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that significantly improve, or have the potential to significantly improve, student outcomes.

(b) Working with SEAs or LEAs on identifying and implementing policies, strategies, and practices that encourage improved student outcomes through personalization of learning, including selecting or developing and implementing technologies that support personalized learning.

3. Management Plan

An applicant must submit a management plan that describes the responsibilities of key personnel, timelines, and milestones for accomplishing project tasks; the time commitment of key personnel; and the adequacy and allocation of resources, including financial or in-kind matching contributions from an entity or organization in the public or private sector, if any. If an applicant's proposed budget includes matching contributions, the application must include evidence of a commitment for the full amount of the matching contribution, inclusive of the source of the funds or in-kind contributions and the date(s) they will be received.

4. Evaluation Plan

Each applicant must provide a plan to engage a third-party provider to assess the progress and performance of the center in meeting the educational and capacity-building needs of SEAs. The plan must identify performance objectives the project intends to achieve and performance measures for each performance objective; explain the quantitative and qualitative methods that will be used to collect, analyze, and report performance data; and describe the methods that will be used to monitor progress and make mid-course corrections as needed. Each center must also provide a plan to collect and use reliable formative and summative data throughout the grant period to inform and improve service delivery.

IV. Proposed Flexibility and Requirements for Regional Assignments

Background. Currently, the Department funds 16 Regional Centers that serve States within defined geographic boundaries. In order to implement customer-centered, performance-focused technical assistance across the Regional Centers and provide States with the opportunity to create a demand-driven market for services, the Assistant Secretary is considering modifying the regional structure of the Comprehensive Centers to allow States greater choice about the Regional Centers with which they affiliate. Modifying the current structure would allow an SEA to seek services from the Regional Center that it believes will best meet its needs, regardless of its geographic location, and strengthen the incentives for Regional Centers to provide relevant and high-quality

technical assistance. However, modifying the current structure could make planning and staffing of Regional Centers difficult (*e.g.,* because of uncertainty regarding a center's level of funding) and lead to gaps in service as a State transitions to a new Regional Center. It could also deter collaboration among Regional Centers, which might adversely affect the quality of technical assistance provided.

Given the potential advantages and disadvantages of providing such an option for States, the Department is particularly interested in receiving comments on the following proposed requirements.

Proposed requirements. Under the proposed modified structure, in the second fiscal year of the cooperative agreement, and in each subsequent fiscal year, an SEA could indicate to the Department its desire to affiliate with a different Regional Center, regardless of the geographic location of that Center. A State could exercise this option only once in any two-year period.

To exercise this option, a State would notify the Department in writing, not later than 60 days prior to the end of the fiscal year, that it wishes to affiliate with a different Regional Center. The State would provide—

A. Documentation from the proposed Regional Center with which it wants to affiliate that indicates the Center's willingness and capacity to serve the additional State; and

B. Other information that the Department requests.

After considering the documentation and other information, the Department could approve a request if it is consistent with the requirements in section 203(a) of ETAA that (1) there be no fewer than 20 Comprehensive Centers and that (2) there be at least one Comprehensive Center in each of the 10 geographic regions served by the RELs. If the Department approves the request, the Department would re-designate regions served by each Regional Center to reflect any changes in regional membership. The Department would re-allocate the funding to each center, taking into account changes in the number of students served by each Regional Center and other such factors it deems appropriate. The Department would provide notification of any changes through a notice published in the **Federal Register**.

V. Proposed Selection Criteria

Background: In any competition under this program, the Secretary proposes to use one or more of the selection criteria proposed in this notice, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the Comprehensive Centers program in accordance with 34 CFR 75.209, or any combination of these. This includes the authority to reduce the number of selection criteria.

The Secretary may apply one or more of these criteria in any year in which this program is in effect. The Secretary may also select one or more of these selection criteria to review pre-applications, if the Secretary decides to invite pre-applications in accordance with 34 CFR 75.103. In the notice inviting applications, the application package, or both, we will announce the maximum possible points assigned to each criterion.

Proposed Selection Criteria: We propose to use the following selection criteria to evaluate applications under this program.

A. Technical Assistance Plan

1. *Overall quality of the technical assistance plan.* In determining the overall quality of the technical assistance plan for the proposed center and the likelihood of the center contributing to improved State outcomes, the Secretary considers—

a. The extent to which the proposed technical assistance plan presents an exceptional approach that will likely result in building SEA capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction;

b. The potential contribution of the center to increasing the knowledge and understanding of effective strategies in the center's area of expertise; and

c. The extent to which the proposed technical assistance plan presents an approach that will result in the sharing of high-quality, relevant, useful information, materials, and other applicable resources across SEAs, districts, and schools, within and outside of a region.

2. *Quality of the Project Design.* In determining the quality of the project design of the proposed center for which the applicant is applying, the Secretary considers—

a. The extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all centers, which includes—

i. Providing high-quality technical assistance that is based on up-to-date knowledge and understanding of research-based practices and emerging promising practices; is highly relevant and useful to SEAs, LEAs, and school policymakers and practitioners; and is delivered in a timely, cost-efficient manner;

ii. Focusing technical assistance on helping SEAs build capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction; and

iii. Coordinating and collaborating with national experts and technical assistance providers to ensure that the technical assistance is informed by leading-edge research and innovative approaches and avoids duplicating efforts;

b. In the case of an applicant for a Regional Center, the extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all Regional Centers; and

c. In the case of an applicant for a Content Center, the extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all Content Centers, as well as the requirements for the specific Content Center for which the applicant is applying.

3. *Knowledge of State Technical Assistance Needs.* In determining the applicant's ability to meet State technical assistance needs, the Secretary considers the extent to which the proposed technical assistance plan provides strategies that address the technical assistance needs of States in key areas, as evidenced by in-depth knowledge and understanding of—

a. For Regional Centers, the specific educational goals and priorities of the States to be served by the applicant, including emerging priorities based on State-led reform efforts;

b. For Regional Centers, the applicable State and regional demographics, policy contexts, and other factors and their relevance to improving student outcomes, closing achievement gaps, and improving instruction; and

c. For Content Centers, State technical assistance needs, and research-based practices and emerging promising practices related to the Content Center for which the applicant is applying.

B. Subject-Matter and Technical Expertise

Quality of Key Project Personnel. In determining the subject-matter and technical expertise of key project personnel, the Secretary considers the extent to which the applicant encourages applications for employment

from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers—

1. The knowledge, understanding, and experience of key project personnel as outlined under subject-matter and technical expertise requirements for all centers;

2. In the case of an applicant for a Regional Center, in addition to the knowledge, understanding, and experience outlined under subject-matter and technical expertise requirements for all centers, the subject-matter and technical expertise of key personnel outlined under the requirements for Regional Centers;

3. In the case of an applicant for a Content Center, in addition to the knowledge, understanding, and experience outlined under subject-matter and technical expertise requirements for all centers, the subject-matter and technical expertise of key personnel outlined under the requirements for the specific Content Center for which the applicant is applying;

4. The extent to which the applicant has demonstrated experience providing high-quality technical assistance to SEAs or multiple districts;

5. The extent to which the applicant has demonstrated the ability to develop ongoing partnerships with leading experts and organizations nationwide that inform high-quality technical assistance and subject-matter expertise;

6. The extent to which the applicant has prior relevant experience operating a project of the scope required for the purposes of the center being proposed; and

7. The extent to which the applicant proposes an advisory board membership in accordance with the requirements of the ETAA and includes reasonable assurance of proposed board members' commitment to serve.

C. Management and Evaluation Plans

1. Quality of the Management Plan

In determining the quality of the management plan for the proposed center, the Secretary considers—

a. The adequacy of the management plan to achieve the objectives of the project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

b. The extent to which the time commitments of the project director and other key project personnel, including any partners or consultants, are appropriate and adequate to meet the objectives of the proposed project;

c. The extent to which resources are allocated within a region for Regional Centers, and across regions for Content Centers, in a manner that reflects the need for technical assistance; and

d. The adequacy of the resources for the proposed project, including whether the applicant proposes facilities and equipment to successfully carry out the purposes and activities of the proposed center.

2. Quality of the Project Evaluation Plan

In determining the quality of the evaluation plan, the Secretary considers—

a. The extent to which the applicant demonstrates a strong capacity to provide reliable formative and summative data on performance measures;

b. The extent to which the performance goals and objectives for the project are clearly specified and measurable in terms of the project activities to be accomplished and their stated outcomes;

c. The extent to which the methods for monitoring performance and evaluating the effectiveness of project strategies in terms of outcomes for SEAs, districts, and schools are thorough, feasible, and appropriate to the objectives and outcomes of the proposed project;

d. The extent to which the methods of evaluation will provide continuous performance feedback and encourage the continuous assessment of progress toward achieving intended outcomes; and

e. The extent to which the applicant has a high-quality plan to use both formative and summative data from evaluations to inform and improve service delivery over the course of the grant.

Final Priorities, Requirements, and Selection Criteria

We will announce the final priorities, requirements, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, requirements, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563: Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the Executive Order, it has been determined that this regulatory action is significant and subject to OMB review under section 3(f)(4) of the Executive order.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account— among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

Need for Federal Regulatory Action:

The proposed priorities, requirements, and selection criteria are needed to implement the Comprehensive Centers program because the authorizing language in the ETAA provides only broad parameters to govern the program. The Department does not believe that the statute, by itself, provides a sufficient level of detail to ensure that all States can build their capacity to improve educational outcomes for all students. The priorities, requirements, and selection criteria proposed in this notice would clarify the types of centers the Department seeks to fund and permit the Department to evaluate proposed centers using selection criteria that are based on the purpose of the program and are closely aligned with the Department's priorities.

In the absence of specific selection criteria for the Comprehensive Centers program, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. However, the Department does not believe the use of those general criteria would be sufficient for a Comprehensive Centers program competition because they do not focus specifically on the objectives of the program, especially the role of the centers in providing technical assistance to States so that they can build their capacity to assist LEAs and schools and, in turn, improve educational outcomes for students.

Regulatory Alternatives Considered:

The Department considered a variety of possible priorities, requirements, and selection criteria before deciding to propose those included in this notice. For example, the Department considered a priority to support knowledge management and dissemination across all Comprehensive Centers. It chose instead to propose requiring each center to collaborate with other Department-funded centers engaged in that type of activity.

The proposed priorities, requirements, and selection criteria reflect and promote the purpose of the Comprehensive Centers program. They also align the program, where possible and permissible, with other Presidential and Departmental priorities. We believe that the proposals in this notice appropriately balance the need for specific programmatic guidance while providing each applicant with flexibility to design and propose an innovative and effective Comprehensive Center. We seek public comment on whether we have achieved an acceptable balance.

Summary of Costs and Benefits:

The Department believes that the proposed priorities, requirements, and selection criteria would not impose significant costs on eligible research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals that would receive assistance through the Comprehensive Centers program. We also believe that the benefits of implementing the proposals contained in this notice justify any associated costs.

The Department believes that the proposed priorities, requirements, and selection criteria would result in the selection of high-quality applications to establish centers that are most likely to build the capacity of SEAs in order to improve educational outcomes for all students. Through the regulatory action proposed in this notice, we seek to provide clarity as to the scope of activities we expect to support with program funds and the expected burden of work involved in preparing an application and implementing a center under the program. A potential applicant would need to consider carefully the effort that would be required to prepare a strong application and its capacity to implement a project successfully.

The Department further believes that the costs imposed on an applicant by the proposed priorities, requirements, and selection criteria would be largely limited to paperwork burden related to preparing an application and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. This is because, during the project period, the costs of actually establishing a center and carrying out activities under a Comprehensive Centers program grant would be paid for with program funds and any matching funds. Thus, the costs of establishing a Comprehensive Center using these proposed priorities, requirements, and selection criteria would not be a significant burden for any eligible applicant, including a small entity.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Accounting Statement:

As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to eligible applicants under this program as a result of this proposed regulatory action. This table is based on funds the Department has requested for new awards for this program for FY 2012. The actual level of funding, if any, depends on final congressional action. Expenditures are classified as transfers to those entities listed.

Accounting Statement Classification of Estimated Expenditures:

Category	Transfers (in millions)
Annual Monetized Transfers.	$51.2
From Whom to Whom	Federal Government to research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals.

Effect on Other Levels of Government:

We have determined that this regulatory action would not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1995:

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation process to

provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

We estimate that each applicant would spend approximately 176 hours of staff time to address the proposed priorities, requirements, and selection criteria; prepare the application; and obtain necessary clearances. Based on the number of applications the Department received in the last competition it held under this program (in FY 2005), we expect to receive approximately 65 applications for these funds. The total number of hours for all expected applicants is an estimated 11,440 hours. We estimate the total cost per hour of the applicant-level staff who will carry out this work to be $57 per hour. The total estimated cost for all applicants would be $652,080.

We have submitted an Information Collection Request (ICR) for this collection to OMB. If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at *http://edicsweb.ed.gov.* Click on Browse Pending Collections. In EDICS this proposed collection is identified as 04785. This ICR is also available on OMB's RegInfo Web site at *www.reginfo.gov.*

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed priorities, requirements, and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the proposed collection within 30 days after publication. This does not affect the deadline for your comments to us on the proposed priorities, requirements, and selection criteria.

Please note that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. We will provide the OMB control number when we publish the notice of final priorities, requirements, definitions, and selection criteria.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action may affect are eligible research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals. The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant.

Participation in the Comprehensive Centers program is voluntary. For this reason, the proposed priorities, requirements, and selection criteria would impose no burden on small entities unless they applied for funding under the Comprehensive Centers program using the priorities, requirements, and selection criteria proposed in this notice. We expect that in determining whether to apply for Comprehensive Center funds, an eligible entity would evaluate the requirements of preparing an application and implementing a Comprehensive Center, and any associated costs, and weigh them against the benefits likely to be achieved by implementing a center. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a Comprehensive Center program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of such application to create partnerships with other entities in order to assist State educational agencies.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The Secretary believes that the priorities, requirements, and selection criteria proposed in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

Further, this proposed regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. The Secretary invites comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order

12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *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: January 18, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–1247 Filed 1–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of 229 Boundary Revision at the Paducah Gaseous Diffusion Plant

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Notices concerning unauthorized entry into or upon areas, buildings, and other facilities of the Paducah Gaseous Diffusion Plant, located in McCracken County, KY, published at (30 FR 13287, October 19, 1965 and at 45 FR 30106, May 7, 1980) are amended by substitution of the following descriptive language for the entirety of the former descriptions.

SUPPLEMENTARY INFORMATION: Notice is hereby given, by the Department of Energy, pursuant to Section 229 of the Atomic Energy Act of 1954, as amended, and as implemented by 10 CFR Part 860, and by Section 705(a) of the Department of Energy Organization Act, that unauthorized entry, as provided in 10 CFR 860.3, and the unauthorized introduction of dangerous weapons, explosives, or dangerous materials or dangerous instruments likely to produce substantial injury or damage to persons or property, as provided in 10 CFR 860.4, into or upon this facility, installation, or real property of the Paducah Gaseous Diffusion Plant located in McCracken County, Kentucky, as more fully described below, is prohibited by the United States Department of Energy. The areas subject to the above described prohibitions are more particularly described as follows:

1. The Department of Energy installation known as the Paducah Gaseous Diffusion Plant located in McCracken County, KY, approximately 6,000 feet North of Woodville Road (State Route 725) and approximately 6,300 feet West of Metropolis Lake Road. The primary security interest area, including a buffer area, totals approximately 1,342 acres with boundary coordinates as follows:

Longitude	*Latitude*
1. 88.82566308	37.08885001
2. 88.81798343	37.10599209
3. 88.82655474	37.10845764
4. 88.82809126	37.11325409
5. 88.82809126	37.11676083
6. 88.82374798	37.11646865
7. 88.81993743	37.12479987
8. 88.80973832	37.12183780
9. 88.80839907	37.12475971
10. 88.80727527	37.12206995
11. 88.80472524	37.12163638
12. 88.79639904	37.11904332
13. 88.80358172	37.10300759
14. 88.80657162	37.09992874
15. 88.81123139	37.09860962
16. 88.82008684	37.09825329
17. 88.82436407	37.08842103

2. The Department of Energy landfill installation located North of Item 1 above and consisting of approximately 106 acres enclosed by a chain-link fence with boundary coordinates as follows:

Longitude	*Latitude*
1. 88.80235649	37.12538578
2. 88.79890091	37.13329589
3. 88.79333779	37.13168788
4. 88.79527431	37.12805870
5. 88.79601369	37.12826426
6. 88.79756107	37.12494008
7. 88.79855316	37.12421613

Issued in Paducah, Kentucky on January 12, 2012.

William E. Murphie,

Manager, Portsmouth/Paducah Project Office.

[FR Doc. 2012–1214 Filed 1–20–12; 8:45 a.m.]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Acquisition of a Natural Gas Pipeline and Natural Gas Utility Service at the Hanford Site, Richland, WA, and Notice of Floodplains and Wetlands Involvement (DOE/EIS–0467)

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Floodplains and Wetlands Involvement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an *Environmental Impact Statement for the Acquisition of a Natural Gas Pipeline and Natural Gas Utility Service at the Hanford Site, Richland, Washington* (Natural Gas Pipeline or NGP EIS), and initiate a 30-day public scoping period. DOE will prepare the NGP EIS in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations that implement NEPA and DOE implementing procedures. DOE is inviting public comment on the proposed scope of the NGP EIS, including the alternatives and environmental issues to be evaluated.

DOE proposes to make natural gas available to facilities located on the Central Plateau of its Hanford Site near Richland, Washington, to help meet its objectives to reduce fuel costs, greenhouse gas (GHG) emissions, and dependence on foreign fuel sources. Because natural gas is not currently available on the Central Plateau of the Site, this action would involve entering into a contract with a licensed natural gas utility supplier to construct, operate, and maintain a natural gas pipeline and deliver natural gas utility service to DOE.

The proposed pipeline would begin from a new interconnect tap on the existing Williams Northwest Pipe transmission line in Franklin County, north of the Pasco, Washington, airport, and then run westerly across non-DOE lands and under the Columbia River onto the Hanford Site 300 Area, before turning northwest and paralleling Route 4S. The pipeline would terminate at facilities in the 200 East Area of the

Central Plateau. The length of the proposed pipeline is estimated at about 30 miles.

DATES: DOE invites public comment on the scope of the NGP EIS during a 30-day public scoping period beginning January 23, 2012 and ending on February 22, 2012. DOE will consider all comments received or postmarked by the end of the scoping period, and will consider comments received or postmarked after the ending date to the extent practicable.

DOE will hold a public scoping meeting on February 9, 2012, from 7 p.m. to 9 p.m. at the Red Lion Hotel and Conference Center, Pasco, Washington. Further information about the public scoping meeting is provided under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Scoping comments may be submitted by regular mail as follows: Mr. Douglas Chapin, NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, MSIN A5–11, Richland, WA 99352.

Scoping comments may also be submitted by email to *naturalgaseis@rl.gov*.

To be placed on the distribution list for the Draft NGP EIS, use either of the methods listed above. In requesting a copy of the Draft NGP EIS, please specify preference for a printed copy of the entire Draft NGP EIS, a printed copy of the Summary only, the Draft NGP EIS and Summary on a computer CD, or any combination thereof.

FOR FURTHER INFORMATION CONTACT: For information on DOE's proposed action, contact Mr. Chapin by one of the methods listed in **ADDRESSES** above, or at (509) 373–9396.

For general information concerning DOE's NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0119, Telephone (202) 586–4600, Fax (202) 586–7031, Voice mail message 1–(800) 472–2756, Email *asknepa@hq.doe.gov*.

Additional information regarding DOE's NEPA activities is available on the DOE NEPA Web site at *http://energy.gov/nepa*.

SUPPLEMENTARY INFORMATION:

Background

Situated along the Columbia River in southeastern Washington, DOE's 586-square-mile Hanford Site is undergoing extensive efforts to clean up contamination resulting from past nuclear defense research and development activities dating back to World War II. To this end, DOE is constructing the Waste Treatment Plant (WTP) on the Site's Central Plateau (200 East Area). Once operational, the WTP will treat radioactive waste presently stored in underground storage tanks on the Central Plateau to prepare it for disposal.

The WTP is planned to be a chemical and radioactive waste processing facility capable of separating radioactive liquid waste stored underground in the Hanford Site's 200 East Area waste storage tanks into high-level radioactive waste (HLW) and low-activity waste fractions, and then blending the waste with molten glass (vitrification) to turn it into a stable form for safe disposal. The 242–A Evaporator, also located in the 200 East Area of the Hanford Site, receives liquid wastes pumped through underground pipes from the double-shell waste storage tanks (DSTs) and processes the waste to reduce its volume.

The 242–A Evaporator currently uses diesel fuel, and the WTP is planned to use diesel fuel as well. DOE has identified a number of potential advantages, including substantial cost savings, to replacing the use of diesel fuel with natural gas, supplementing with diesel fuel as necessary.

Purpose and Need for Agency Action

DOE needs to comply with Federal policy and legal responsibilities to reduce costs, GHGs, and dependence on foreign fuel sources, in accordance with the goals and objectives of the Energy Policy Act of 2005 (EPAct), Executive Order (EO) 13423, and EO 13514. The EPAct, enacted into law in August 2005, provides a long-term strategy to confront the energy challenges posed by increasing prices and growing dependence on foreign oil in a comprehensive, economic, and environmentally sensitive way. The EPAct establishes important national energy policy goals and directs DOE to increase energy security through diversification of energy sources, increased energy efficiency, and conservation.

EO 13423, Strengthening Federal Environmental, Energy, and Transportation Management (January 2007), specified goals in the areas of energy efficiency, renewable energy, toxic chemical reduction, recycling, sustainable buildings, electronics stewardship, fleets, and water conservation. EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance (October 2009), established sustainability goals for Federal agencies and focused on improving their environmental, energy and economic performance. EO 13514 requires Federal agencies to set a 2020 GHG emissions reduction target; increase energy efficiency; reduce fleet petroleum consumption; conserve water; reduce waste; support sustainable communities; and leverage Federal purchasing power to promote environmentally-responsible products and technologies. Replacing diesel fuel with natural gas would support these goals. However, natural gas is not currently available on the Central Plateau of the Hanford Site. Accordingly, DOE would need to acquire a supply of natural gas to the WTP and 242–A Evaporator in the 200 East Area of the Hanford Site.

Proposed Action and Alternatives

DOE proposes to enter into a contract with a licensed natural gas utility supplier to provide natural gas to support WTP and the 242–A Evaporator operations in the 200 East Area of the Hanford Site. The proposed action would include, among other things, the construction, operation, and maintenance of a natural gas utility delivery system via a natural gas pipeline. Construction of the proposed natural gas pipeline would originate at a new interconnect tap on the existing Williams Northwest Pipe transmission line in Franklin County, north of the Pasco, Washington, airport. The pipeline would run westerly across non-DOE lands and under the Columbia River onto the Hanford Site 300 Area, before turning northwest and paralleling Route 4S, terminating at facilities in the 200 East Area of the Central Plateau. The total length of the proposed pipeline is estimated at about 30 miles.

As required by CEQ and DOE NEPA implementing regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508 and 10 CFR Part 1021), DOE will evaluate the Proposed Action and No Action alternative for the acquisition of natural gas utility service at the WTP and the 242–A Evaporator, as well as alternative pipeline routing alignments and alternative pipeline diameters of approximately 12, 15, and 20 inches as a representative sampling of potential options. At this time, DOE does not plan to evaluate other sources of energy supply, or other means to supply natural gas, to the WTP and 242–A Evaporator. In addition, DOE has no other intended or planned uses for the proposed natural gas utility service on the Hanford Site at this time, and is not aware of any proposals by others for use of the natural gas.

Under the No Action alternative, DOE would not contract for acquisition of natural gas utility service, and thus, the pipeline would not be constructed. DOE

would continue to use diesel fuel to power the 242–A Evaporator and would use diesel fuel to power the WTP, as currently planned.

Because all reasonable alternative pipeline routing alignments involve crossing the Columbia River, portions of the proposed action may affect floodplains and wetlands. This NOI serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements (10 CFR part 1022). As appropriate and in accordance with 10 CFR part 1022, the NGP Draft EIS will include a floodplain and wetland assessment, and a floodplain statement of findings will be included in the Final EIS or may be issued separately (10 CFR 1022.14(c)).

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. Federal agencies are encouraged to coordinate compliance with Section 106 of the NHPA with any steps taken to meet the requirements of NEPA. DOE plans to use the NEPA process and documentation required for the preparation of this EIS to satisfy applicable requirements of NHPA Section 106. As specified in the regulations issued by the Advisory Council on Historic Preservation (ACHP) to implement the Section 106 process (36 CFR part 800, 800.8), DOE will use the NEPA process in lieu of the procedures set forth in §§ 800.3 through 800.6. DOE specifically invites the ACHP, the State of Washington Historic Preservation Officer (SHPO), Hanford Area Tribal Nations, and members of the public to participate in this NEPA process for the purpose of ensuring the standards in 36 CFR 800.8(c)(1) through 800.8(c)(5) are met, including identifying mitigation actions that may be appropriate to address potential adverse effects that may result from implementing the Proposed Action.

Preliminary Identification of Environmental Issues

DOE proposes to analyze potential short-term health and environmental impacts, such as those from construction, and potential long-term health and environmental impacts of operating and maintaining the pipeline over a period assumed to be 100 years for the purposes of analysis, once service commences. DOE will analyze potential issues and impacts at a level of detail commensurate with their importance. Potential impact areas to be evaluated include, but are not limited to, the following:

- Potential effects on public health and workers from exposures to hazardous materials during construction, operations, and transportation under routine and credible accident scenarios.
- Potential impacts on surface water and groundwater, floodplains, and wetlands, and on water use and quality.
- Potential impacts on air quality.
- Potential noise impacts.
- Potential impacts on plants and animals and their habitat, including species that are Federal- or state-listed as threatened or endangered, or of special concern.
- Potential impacts on geology and soil characteristics.
- Potential impacts on historic and cultural resources including places, viewshed, archeological, and Native American or other culturally important sites.
- Socioeconomic impacts, either beneficial or adverse, on potentially affected communities.
- Environmental justice, particularly whether the proposed action or alternatives have disproportionately high and adverse effects on minority and low-income populations.
- Potential impacts on land-use plans, policies and controls, and visual resources.
- Pollution prevention and waste management practices and activities.
- Unavoidable adverse impacts and irreversible and irretrievable commitments of resources.
- Potential cumulative environmental effects of past, present and reasonably foreseeable actions.
- Potential impacts of reasonably foreseeable accidents and potential impacts from intentionally destructive acts, including sabotage or terrorism.
- Potential natural disasters: floods, hurricanes, tornadoes, and seismic events.
- Status of compliance with all applicable Federal, state and local statutes and regulations, and required Federal and state environmental permits, consultations and notifications.

Invitation for Public Comment

DOE invites Federal agencies; State, Tribal, and local governments; organizations; and the general public to comment on the scope of the EIS, including identification of alternatives and specific issues to be addressed.

DOE also invites comments on the potential adverse effects that may result from the Proposed Action with respect to historic resources governed by NHPA, along with suggested actions DOE might take to mitigate any such adverse effects. DOE will coordinate with appropriate Federal, State, and local agencies and potentially affected Native American tribes during the preparation of the EIS. While there are no designated cooperating agencies at this time, DOE plans to invite Federal, State, and local government agencies with jurisdiction by law or special expertise to participate as cooperating agencies in preparing the EIS.

DOE will consider all comments received during a 30-day public scoping period beginning January 23, 2012 and ending on February 22, 2012. DOE will consider comments received after that date to the extent practicable.

At the public scoping meeting, DOE will provide an overview of the proposed action followed by a short, informal question-and-answer period to clarify the information presented. Thereafter, the public will have an opportunity to present oral and written comments on the proposed EIS scope; oral comments will be documented by a court reporter. DOE will consider all public scoping comments in preparing the Draft NGP EIS.

Issued at Washington, DC, on January 17, 2012.

David Huizenga,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 2012–1139 Filed 1–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Transfer of Land Tracts Located at Los Alamos National Laboratory, New Mexico

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Amended Record of Decision.

SUMMARY: The U.S. Department of Energy's National Nuclear Security Administration (DOE/NNSA) is issuing this Amended Record of Decision (ROD) for the Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico, DOE/EIS–0293 (Conveyance and Transfer EIS) to address the remaining acreage of Los Alamos National Laboratory's (LANL's) Technical Area 21 (TA–21) Tract (about 245 acres) and the remaining acreage of the Airport Tract (about 55 acres). DOE/NNSA has determined that it is no longer necessary to retain these lands

and will make them available for conveyance and transfer.

FOR FURTHER INFORMATION CONTACT: For copies of the Conveyance and Transfer EIS, the 2000 Record of Decision (ROD), and/or the two previous amended RODs (discussed in later paragraphs), or to receive further information regarding the Los Alamos Site Office's National Environmental Policy Act (NEPA) compliance program, contact: Mr. George J. Rael, Assistant Manager Environmental Operations, NEPA Compliance Officer, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 3747 West Jemez Road, Los Alamos, NM 87544. Mr. Rael may be contacted by telephone at (505) 665–5658. For information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

Additional information regarding DOE NEPA activities and access to many DOE NEPA documents are available on the Internet through the DOE NEPA Web site at: *http://www.gc.energy.gov/nepa/.*

SUPPLEMENTARY INFORMATION:

Background

LANL is a multidisciplinary, multipurpose research institution in north-central New Mexico, about 60 miles (97 kilometers) north-northeast of Albuquerque, and about 25 miles (40 kilometers) northwest of Santa Fe. The small communities of Los Alamos townsite, White Rock, Pajarito Acres, the Royal Crest Mobile Home Park, and San Ildefonso Pueblo are located in the immediate vicinity of LANL. LANL occupies an area of approximately 23,040 acres (9324 hectares), or approximately 36 square miles (93 square kilometers).

Legal Requirements for Action

On November 26, 1997, Congress passed Public Law 105–119, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Fiscal Year 1998 (''the Act''). Section 632 of the Act (42 U.S.C. 2391) directs the Secretary of Energy (the Secretary) to convey to the Incorporated County of Los Alamos, New Mexico, or to the designee of the County, and transfer to the Department of the Interior, in trust for the San Ildefonso Pueblo, parcels of land under the jurisdictional administrative control of the Secretary at or in the vicinity of LANL. Such parcels, or tracts, of land must meet suitability criteria established by the Act. The purpose for these conveyances and transfers is to fulfill the obligations of the United States with respect to Los Alamos, New Mexico, under sections 91 and 94 of the Atomic Energy Community Act of 1955 (AECA) (42 U.S.C. 2391, 2394). Upon the completion of the conveyance or transfer, the Secretary of Energy shall make no further financial assistance payments with respect to LANL under the AECA.

The Act set forth the criteria, processes, and dates by which tracts would be selected, titles to the tracts reviewed, environmental issues evaluated, and decisions made as to the allocation of the tracts between the two recipients. DOE's responsibilities under the Act include identifying potentially suitable tracts of land according to criteria set forth in the law (Land Transfer Report, April 1998); conducting a title search on each tract of land (Title Report, September 1998); identifying any environmental restoration and remediation that would be needed for each tract of land (Environmental Restoration Report, August 1999); conducting National Environmental Policy Act of 1969 (NEPA) review of the proposed conveyance or transfer of the land tracts (the Conveyance and Transfer EIS, October 1999, distributed in January 2000); reporting to Congress on the results of the Environmental Restoration Report review and the final Conveyance and Transfer EIS (Combined Data Report, January 2000); and preparing a plan for conveying or transferring land according to the allocation agreement of parcels for Congress (Conveyance and Transfer Plan, April 2000). Additionally, the disposition of each tract, or portion of a tract, would be subject to DOE's completion of any necessary environmental restoration or remediation required.

Previous Decisions on the Conveyance and Transfer Actions

In the 2000 ROD for the Conveyance and Transfer EIS (65 FR 14952, March 20, 2000), DOE's decision, consistent with the Preferred Alternative analyzed in the Conveyance and Transfer EIS, was to convey or transfer seven tracts in whole and three tracts (the Airport, TA–21, and White Rock Y Tracts) in part by November 26, 2007, the original transfer deadline established in the Act. Portions of the three partial tracts were initially withheld by DOE because of potential national security mission needs for retaining security, health, and safety buffer zones surrounding operational areas. For this reason, DOE's decision at that time was to convey or transfer 110 acres of the Airport Tract, 20 acres of the TA–21 Tract, and 125 acres of the White Rock Y Tract. DOE stated in the ROD that it would make every effort to minimize the portions of the tracts it retains and only retain essential areas and convey or transfer the remainder of the tracts before the transfer deadline.

On June 26, 2002, NNSA issued an Amended ROD (67 FR 45495; July 9, 2002) that announced NNSA's determination that an 8-acre portion of the Airport Tract at its western end that had been retained to serve as a health and safety buffer zone was no longer required for that purpose and could be conveyed. NNSA additionally identified two portions of the White Rock Y Tract that were unlikely to be needed to serve as health and safety buffers and could be conveyed as well. These portions contain stretches of public roadways along State Road 502 and State Road 4 and total about 74 acres.

On July 28, 2005, NNSA issued another Amended ROD (70 FR 48378; August 17, 2005) announcing NNSA's decision to convey an additional 32.3-acre portion of the Airport Tract based on its determination that this portion of the tract located along the south side of State Road 502 was no longer required to serve as a health and safety buffer area. This decision also stated that the remainder of the Airport Tract, about 55 acres, would be retained until tritium operations ceased within the previously-retained approximately 245 acres of the TA–21 Tract.

Rationale Supporting the Conveyance and Transfer of Portions of Retained Tracts

The original 2000 ROD for the Conveyance and Transfer EIS stated with regard to the three tracts that were conveyed in part, that DOE would continue to resolve outstanding national security mission support issues on the remaining portions of the tracts so that conveyance or transfer of those portions could occur before the end of the 2007 deadline identified in the Act, which has been extended to November 26, 2022 by the National Defense Authorization Act for Fiscal Year 2011, (Pub. L. 111–383). DOE could include deed restrictions, notices, and similar land use controls, as deemed appropriate and necessary, that are protective of human health and safety to facilitate the transfer of the remaining portions of these tracts.

In 2000, the TA–21 Tract housed both the Tritium Systems Test Assembly (TSTA) and the Tritium Sciences and

Fabrication Facility (TSFF), and both of these facilities were scheduled to continue operations past the year 2007. These two research facilities were identified as being needed for the national security mission and there were no formal plans to relocate them at that time. However, NNSA has subsequently discontinued both the TSTA and TSFF operations within TA–21. The TSFF tritium operations have been relocated away from LANL, and all other remaining TA–21 operations have been moved to existing facilities within LANL. All of the TA–21 buildings and structures are now undergoing or have undergone complete decommissioning, decontamination, and demolition. Total site environmental remediation of TA–21 will be undertaken, and is currently scheduled for completion over the next decade.

In the near term, NNSA has determined that the remaining portion of the Airport Tract situated along State Road 502 on the Townsite Mesa top (about 55 acres) that had been retained to serve as a health and safety buffer for the TA–21 operations nearby is no longer required for that purpose. This partial tract can now be conveyed. NNSA has also determined that it will convey the remaining portion of the TA–21 Tract (about 245 acres) situated along DP Road on the DP Mesa top and east into the DP canyon area, as this previously retained portion of the Tract is no longer required for LANL operations. This 245-acre portion of the TA–21 Tract can now be conveyed on a partial-tract-by-partial-tract basis as soon as environmental restoration and remediation actions are completed.

Amended Decisions

NNSA is modifying its decisions on conveyance and transfer of certain land tracts at LANL based upon the conditions to transfer properties as outlined in the Act.

• *The Airport Tract,* originally consisting of about 205 acres (83 hectares), is located east of the Los Alamos townsite near the East Gate Business Park. The Los Alamos Airport is located on the northern part of the tract. In March 2000, DOE decided to convey or transfer part of the tract, approximately 110 acres along the north side of East Road. Portions of the tract were retained by DOE to sustain mission need and provide a health and safety buffer to support TA–21 activities. With the planned shutdown of portions of its tritium activities at TA–21, NNSA decided to convey an additional 8-acre portion of the Airport Tract in 2002. In 2005, NNSA decided to convey a 32.3-acre portion of the Airport Tract located along the south side of State Road 502 on top of Townsite Mesa. The subsequent closure of the TSTA and TSFF operations at TA–21 and remediation activities at TA–21 removed the mission need and the requirement for a health and safety buffer for the Airport Tract. Therefore, NNSA has now decided to convey the remaining portions of the Airport Tract, about 55 acres to Los Alamos County, in accordance with the requirements of the Act. With this decision, no acreage of the Airport Tract remains to be conveyed.

• *The TA–21 Tract,* originally consisting of about 260 acres (105 hectares), is located east of the Los Alamos townsite on the eastern end of DP Mesa. In March 2000, DOE decided to convey or transfer part of the tract, approximately 20 acres, located in the northwest section of the TA–21 tract adjacent to the DP Road Tract. Portions of the TA–21 Tract were retained by DOE to sustain mission activities. With the closure of the TSTA and TSFF operations at TA–21 in 2002 and 2006 respectively, and the anticipated completion of the remediation activities at TA–21, DOE no longer has a mission need for this site other than meeting its environmental compliance requirements. NNSA has decided to convey in accordance with the requirements of the Act, the remaining portions, totaling about 245 acres, of the TA–21 Tract. This conveyance will occur on a partial-tract-by-partial-tract basis upon completion of environmental remediation activities. With this decision, the majority of the TA–21 Tract acreage will be conveyed.

Issued in Washington, DC on January 17, 2012.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2012–1208 Filed 1–20–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Disposition of the Bannister Federal Complex, Kansas City, MO, and Notice of Wetlands Involvement

AGENCY: National Nuclear Security Administration (NNSA), U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement and conduct a public scoping meeting, and notice of wetlands involvement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), and the Council on Environmental Quality (CEQ) and U.S. Department of Energy (DOE) regulations implementing NEPA, the National Nuclear Security Administration (NNSA), a semi-autonomous agency within DOE, announces its intention to prepare an environmental impact statement (EIS) for the disposition of the Bannister Federal Complex (BFC) (BFC Disposition EIS; DOE/EIS–0475).

The 300-acre BFC is owned by NNSA and the General Services Administration (GSA). NNSA owns the portion of the BFC known as the Kansas City Plant (KCP), consisting of approximately 122 acres and 38 buildings. GSA owns the remainder of the site, consisting of approximately 175 acres and 13 buildings. Beginning in 2013, NNSA will relocate its operations from the KCP to a newly constructed industrial campus eight miles south of the BFC. Once the move is completed, NNSA's real property at the BFC will be excess to the needs of its mission and will be available for disposition. GSA is currently analyzing its occupancy of the BFC and is performing a separate Environmental Assessment (EA) to evaluate a future relocation option. Because GSA could also decide to relocate its operations away from the BFC, it is a cooperating agency for the preparation of this EIS, which will analyze the potential environmental impacts for the disposition of GSA real property in addition to NNSA real property. The BFC Disposition EIS will analyze the potential environmental impacts associated with reasonably foreseeable potential future uses of the property, which could be different from its current uses. These potential future uses include industrial, warehousing, and commercial/office uses. NNSA also will assess the potential environmental impacts of partial and/or complete demolition of some BFC structures. Because the proposed project could involve actions in wetlands, the EIS will include a wetland assessment.

DATES: NNSA invites comments on the scope of this BFC Disposition EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until February 22, 2012. NNSA will consider all comments received or postmarked by that date in defining the scope of this BFC Disposition EIS. Comments postmarked after that date will be considered to the extent practicable. A public scoping meeting is scheduled to

be held on February 13, 2012, from 6:30 p.m. to 10 p.m. at the Evangel Temple, 1414 East 103rd Street, Kansas City, Missouri 64131. NNSA will publish additional notices on the date, time, and location of the scoping meeting in local newspapers before the scheduled meeting. Any changes regarding the scoping meeting will be announced in the local media. This scoping meeting will provide the public an opportunity to present comments, ask questions, and discuss issues with NNSA and GSA officials related to the scope of the BFC Disposition EIS.

ADDRESSES: To submit comments on the scope of the BFC Disposition EIS, ask questions about the document or scoping meeting, or to be included on the document distribution list, please contact: Mr. Nathan Gorn, BFC Disposition EIS Document Manager, NNSA Kansas City Site Office, 2000 E. 95th Street, Kansas City, Missouri 64131; telephone (816) 997–4197; email: *BFCDEISComments@nnsa.doe.gov;* or via the Internet at *http://nnsa.energy.gov/nepa/bfceis.*

FOR FURTHER INFORMATION CONTACT: For general information about the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, Office of the General Counsel (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; email: *askNEPA@hq.doe.gov*; telephone: (202) 586–4600; fax: (202) 586–7031; or leave a message at (800) 472–2756. Additional information about DOE NEPA activities is available on the Internet through the NEPA Web site: *http://energy.gov/nepa.*

For general information about GSA activities at the BFC, please contact: Jeremiah Nelson, Asset Manager, U.S. General Services Administration, 1500 E. Bannister Road, Room 2135, Kansas City, Missouri 64131–3088; email: *jeremiah.nelson@gsa.gov*; telephone: (816) 823–5803; fax: (816) 926–1140.

SUPPLEMENTARY INFORMATION:

Background. The BFC is within the corporate city limits of Kansas City, approximately eight miles south of the city center. It can be accessed via major highways (Interstate 435 and U.S. Highway 71), as well as auxiliary and smaller secondary streets. There are no residences and no agricultural activities or farmlands on the BFC. The adjoining properties are mostly residential with isolated commercial tracts, except along the eastern and northern sides, which have been designated for public and recreational uses.

The mission of the NNSA's KCP at the BFC is to produce or procure non-nuclear electrical and mechanical components for nuclear weapons. At present, the KCP occupies a large 1940s-vintage industrial facility with 38 buildings or other structures on a site contiguous with GSA facilities. The KCP shares individual buildings and utilities with GSA operations. The entire site is known as the BFC. The site is zoned for heavy industry.

Between 2013 and 2015, NNSA will relocate its operations at the BFC in total to a newly constructed industrial campus eight miles south of the current location. NNSA's relocation of operations to the new facility was analyzed in an EA completed by GSA in 2008 and adopted by DOE (DOE/EA–1592). When the move is completed, NNSA real property at the BFC will be excess to the needs of the KCP mission and will be available for disposition. Accordingly, in October 2011, NNSA issued a notice of availability, via the Federal Business Opportunities Web site, soliciting proposals of interest for the transfer, sale or lease of its portion of the BFC property. The NNSA KCP facilities at the BFC include office space and manufacturing space for machining; mechanical and electrical assembly; rubber and plastics formulation and fabrication; painting; heat treatment; quality assurance testing, measurement and laboratory functions; clean rooms; and inventory storage. GSA is evaluating its options to potentially relocate its operations to a new location away from the BFC. If GSA decides to relocate its operations, its real property at the BFC could also be available for disposition. Thus the BFC Disposition EIS will analyze the potential environmental impacts associated with the proposed action to transfer the BFC property either in whole or in part and reasonably foreseeable uses of the property.

The environmental review process under NEPA requires Federal agencies to involve the public in preparing an EIS and to analyze potential impacts on environmental, social, cultural, and economic resources. DOE has options under NEPA for addressing the subject of land transfer and in this case has elected to prepare an EIS. This is a site-specific determination. In this case, the environmental impacts of future uses of the site may or may not be significant. For example, KCP market research indicates that potentially interested parties may demolish and replace some or all of the currently existing structures on the property. As part of the EIS analysis, NNSA expects to assess the potential impacts of partial and/or complete demolition of various buildings on the BFC. Additionally, NNSA and GSA acknowledge the interest that stakeholders have expressed in wanting to understand as fully as possible the nature of legacy contaminants present at the BFC and their potential environmental impacts. Preparation of an EIS affords the greatest opportunity to interact with stakeholders, inform them about potential future uses for the BFC and the results of the NEPA analyses and receive comments from stakeholders on uses and issues for analysis.

Disposition of the property would not take place until the BFC Disposition EIS and all required historical, cultural, and wetland assessments are completed and a Record of Decision is issued.

The BFC has been extensively characterized for the presence of legacy contamination that might impact soils and groundwater at the site. Active remediation has taken place at previously identified solid waste management units with implementation of environmental remedies ongoing. To support the proposed action, NNSA and GSA have submitted requests for a modified Missouri Hazardous Waste Management Facility Permit with Region 7 of the U.S. Environmental Protection Agency (EPA) and the Missouri Department of Natural Resources (MDNR) that will require a BFC-wide comprehensive environmental assessment and remediation program under the Resource Conservation and Recovery Act (RCRA). This anticipated environmental assessment will identify and characterize any remaining environmental contamination and define actions that may need to be taken to contain or eliminate any threat to human health or the environment. The outcome of this reexamination of the BFC could include identifying the need to conduct additional NEPA analyses and/or to place restrictions on the potential future uses of the property.

During the BFC Disposition EIS process, NNSA will consult with: (1) Region 7 of the EPA and the MDNR, in accordance with NEPA on environmental issues associated with disposition of the BFC including but not limited to the RCRA assessment described above; and (2) the Missouri State Historic Preservation Office, in accordance with Section 106 of the National Historic Preservation Act.

The BFC lies within the 100-year floodplain of the Blue River and Indian Creek, but is protected from a 500-year flood by a federally funded floodwall and earthen berm system and is, therefore, not considered to be in the 100-year floodplain per the Federal Insurance Rate Map. Based on a 2009

Jurisdictional Waters Determination Report prepared by NNSA, the U.S. Army Corps of Engineers (USACE) has determined that there are no wetlands or jurisdictional waters on the NNSA-owned property at the BFC. USACE has determined that there are 2.95 acres of jurisdictional waters on the GSA-owned property. In accordance with 10 CFR part 1022, *DOE Compliance with Floodplain and Wetland Environmental Review Requirements,* and GSA Order ADM 1095.5, *Consideration of Wetlands in Decisionmaking,* dated January 12, 2001, the BFC Disposition EIS will include a wetlands assessment that discusses the effects of the proposed action and alternatives on the wetlands and evaluates measures that mitigate the adverse effects in the wetlands.

Purpose and Need for Agency Action. The purpose and need for agency action is to dispose of excess federal property, in an environmentally safe and fiscally responsible manner. The proposed action will likely involve conveying the title of usable facilities and land at the BFC to an entity(ies) that would use, market, sell, lease, or otherwise develop the transferred facilities and property to conduct commercial activities in the Kansas City area.

Proposed Action and Alternatives. The proposed action is to transfer the BFC property either in whole or in part for uses that could be different from its current use. The BFC Disposition EIS will consider the following alternatives: (1) No Action:—the status quo is maintained with NNSA and/or GSA continuing to conduct operations at the BFC; (2) Federal Site Stewardship under which a significant portion of the BFC is vacated but the entire site remains the property of the NNSA and GSA and is unused; and (3) a group of at least four Transfer Action Alternatives with conveyance of title, occupancy and use of the entire BFC or a significant portion thereof to other entity(ies) that reflect a range of potential future uses. The group of four Action Alternatives that NNSA currently expects to evaluate include: (1) High intensity use, such as heavy industrial, (2) low intensity use: that would involve demolition of the BFC facilities and conversion to ''green use'' as parkland, nature preserve, or similar uses; (3) low-moderate intensity use, such as warehousing and commercial/office uses; and (4) high-moderate intensity use, such as light industrial, warehousing, and commercial/office uses. The BFC Disposition EIS will also evaluate any reasonable alternatives that may be identified during public scoping.

Preliminary Identification of Environmental Issues. Issues tentatively identified for analysis in the BFC Disposition EIS include impacts associated with: land use, aesthetics, climate and air quality, geology and soils, water resources, biological resources, cultural and historic resources, socioeconomics, waste management, human health and safety, accidents, and environmental justice.

EIS Process and Invitation to Comment. The EIS scoping process provides an opportunity for the public to assist the NNSA and GSA in determining issues for analysis in the BFC Disposition EIS. A public scoping meeting will be held as noted under **DATES** in this Notice. The purpose of the scoping meeting is to provide attendees an opportunity to present comments, ask questions, and discuss issues about the BFC Disposition EIS with NNSA and GSA officials. Comments can also be provided to Mr. Nathan Gorn as noted in this Notice under **ADDRESSES.**

The EIS scoping meeting will use a format to provide the public with information regarding the proposed BFC Disposition EIS, and to provide individuals the opportunity to give written or oral comments. NNSA and GSA welcome specific comments or suggestions on the BFC Disposition EIS process and future uses of the BFC. The BFC Disposition EIS will describe potential environmental impacts of each alternative by using available data when possible and obtaining additional data when necessary. Copies of written comments and transcripts of oral comments provided during the scoping period will be available at the Mid-Continent Public Library, Blue Ridge Branch, 9253 Blue Ridge Boulevard, Kansas City, Missouri 64138 and on the Internet at *http://nnsa.energy.gov/nepa/bfceis.*

After the close of the public scoping period, NNSA and GSA will begin developing the Draft BFC Disposition EIS. NNSA and GSA expect to issue the Draft EIS for public review by mid-2012. The public comment period on the Draft EIS will begin with the publication of the EPA Notice of Availability in the **Federal Register**.

The Notice of Availability, along with notices placed in local newspapers, will provide dates and locations for public hearings and the deadline for comments on the Draft BFC Disposition EIS. Once issued, the BFC Disposition EIS will be available on the Internet at *http://nnsa.energy.gov/nepa/bfceis.* Persons who would like to receive a copy of the Draft EIS for review should notify Mr. Nathan Gorn at the address noted under **ADDRESSES**.

Issued in Washington, DC, this 17th day of January 2012.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2012–1207 Filed 1–20–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0073; FRL 9510–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Requirements for Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0073 to (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Debra Dalcher, Office of Air and Radiation, Office of Air Quality Planning and Standards; Mail Code D243–04; Research Triangle Park, North Carolina 27711; telephone number (919) 541–2443; email address: *dalcher.debra@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has submitted the following ICR to OMB

for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Friday, September 9, 2011, (76 FR 55905) the EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). The EPA received no comments. Any comments on this ICR should be submitted to the EPA and the OMB within 30 days of this notice.

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0073, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket Center is (202) 566–1742.

Use the EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that the EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Requirements for Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants (Renewal).

ICR Numbers: EPA ICR No. 1658.07, OMB Control No. 2060–0373.

ICR Status: This ICR is scheduled to expire on January 31, 2012. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at the OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 112(g)(2)(B) of the Clean Air Act as amended in 1990 (CAA) requires that maximum achievable control technology (MACT) standards be met by constructed or reconstructed major sources of hazardous air pollutants (HAP). Where no applicable emission limit has been set, the MACT determination shall be made on a case-by-case basis. The source owner or operator must submit certain information to allow the permitting authority to perform a case-by-case MACT determination (40 CFR 63.43(e)). Permitting agencies, either State, local, Tribal or Federal, review information submitted and make case-by-case MACT determinations. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 132 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators who construct or reconstruct major sources of hazardous air pollutants; State, local, and Tribal agencies with operating permit programs that have been approved by the EPA.

Estimated Number of Respondents: 8.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 529.

Estimated Total Annual Cost: $38,039, which includes $37,871 in labor costs and $168 in O&M Costs.

Changes in Estimate: There is a decrease of 5908 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in burden is due to the completion of setting MACT standards for the source category list. Therefore our revised estimate of burden is smaller than that estimated in the last ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–1180 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0624; FRL–9510–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Standardized Permit for RCRA Hazardous Waste Management Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0624, to (1) EPA, either online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeff Gaines, Office of Resource Conservation and Recovery, (5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–8655; fax number: (703) 308–8617; email address: *gaines.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2011 (76 FR 48857), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No EPA–HQ–RCRA–2011–0624, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Standardized Permit for RCRA Hazardous Waste Management Facilities (Renewal).

ICR numbers: EPA ICR No. 1935.04, OMB Control No. 2050–0182.

ICR Status: This ICR is scheduled to expire on January 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the authority of sections 3004, 3005, 3008 and 3010 of the Resource Conservation and Recovery Act (RCRA), as amended, the U.S. Environmental Protection Agency (EPA) is finalizing revisions to the RCRA hazardous waste permitting program to allow a ''standardized permit.'' The standardized permit is available to facilities that generate hazardous waste and routinely manage the waste on-site in non-thermal units such as tanks, containers, and containment buildings. This ICR presents a comprehensive description of the information collection requirements for owners and operators submitting applications for a standardized permit or a standardized permit modification.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 82 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Private businesses that generate hazardous waste.

Estimated Number of Respondents: 866.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 15,045 hours.

Estimated Total Annual Cost: $1,307,837, includes $695,868 annualized labor costs and $611,969 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–1181 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0357; FRL 9510–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; BEACH Act Grant Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0357, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lars Wilcut, Standards and Health Protection Division, Office of Science and Technology, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–0447; fax number: (202) 566–0409; email address: *wilcut.lars@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12.

On September 20, 2011 (76 FR 58266), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0357, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: BEACH Act Grant Program (Renewal).

ICR numbers: EPA ICR No. 2048.04, OMB Control No. 2040–0244.

ICR Status: This ICR is currently scheduled to expire on January 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Beaches Environmental Assessment and Coastal Health (BEACH) Act amends the Clean Water Act (CWA) in part and authorizes the U.S. Environmental Protection Agency (EPA) to award BEACH Act Program Development and Implementation Grants to coastal and Great Lakes states, tribes, and territories (collectively referred to as states) for their beach monitoring and notification programs. The grants will assist those states to develop and implement a consistent approach to monitor recreational water quality; assess, manage, and communicate health risks from waterborne microbial contamination; notify the public of pollution occurrences; and post beach advisories and closures to prevent public exposure to microbial pathogens. To qualify for a BEACH Act Grant, a state must submit information to the EPA documenting that its beach monitoring and notification program is consistent with nine performance criteria outlined in the *National Beach Guidance and Required Performance Criteria for Grants*. For the EPA to award a BEACH Implementation Grant, a state must document that its coastal monitoring and notification program includes or will include the following:

- A risk-based beach evaluation and classification plan.
- A sampling design and monitoring implementation plan.
- Monitoring report submission and delegation procedures.
- Methods and assessment procedures.
- A public notification and risk communication plan.
- Measures to notify the EPA and local governments.
- Measures to notify the public.
- Notification report submission and delegation procedures.
- Public evaluation of the program.

Beach program information will be collected by the EPA's Office of Science and Technology and the applicable EPA regions. All information except the monitoring and notification reports will be stored in the applicable regions. The monitoring and notification information will be stored in the eBEACHES Database and displayed on the EPA's Beaches Web site for use by the public, state environmental and public health agencies, and the EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,400 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State environmental and public health agencies in coastal or Great Lakes regions.

Estimated Number of Respondents: 37.

Frequency of Response: Submitting monitoring and notification reports: quarterly; all other reporting: Annual.

Estimated Total Annual Hour Burden: 88,800.

Estimated Total Annual Cost: $11,463,626. This includes an estimated burden cost of $7,520,546 and an estimated cost of $3,943,080 for maintenance and operational costs.

Changes in the Estimates: There is a decrease of 6,147 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is primarily due to a reduction in the estimated number of respondents, as the three tribes who had previously been expected to apply for grants have not done so. EPA expects that no new jurisdictions will become eligible for BEACH Act grant in the next three years. There is a slight increase in the per respondent burden due to EPA's expectation that states will voluntarily report monitoring and notification data more frequently in order to improve public health protection at beaches through increased timeliness of water quality results at beaches nationwide. However the burden of this increased frequency is somewhat offset by increased efficiency in reporting due to technological improvements to data systems such as eBEACHES.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–1182 Filed 1–20–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 23, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0298.

Title: Part 61—Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,210 respondents; 7,350 responses.

Estimated Time per Response: 20–50 hours.

Frequency of Response: On occasion, annual and biennial and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended.

Total Annual Burden: 215,600 hours.

Total Annual Cost: $1,411,150.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information requested is not of a confidential nature. Respondents who believe certain information to be of a proprietary nature may solicit confidential treatment in accordance with the procedures described in 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking OMB approval for a revision of this information collection in order to obtain the full three year approval from OMB. There is a significant increase to the Commission's previous burden estimates.

On November 18, 2011, the Commission adopted the *USF/ICC Transformation Order* that requires or permits incumbent and competitive local exchange carriers as part of transitioning regulation of interstate and intrastate switched access rates and reciprocal compensation rates to bill-and-keep under section 251(b)(5) of the Communications Act of 1934, as amended, to file tariffs with state commissions and the FCC. This transition affects different switched access rates at specified timeframes and establishes an Access Recovery Charge by which carriers will be able to assess end users a monthly charge to recover some or all of the revenues they are permitted to recover resulting from reductions in intercarrier compensation rates. We estimate that 40 rate-of-return LECs will need to make an additional interstate access tariff filing annually and that 330 competitive and incumbent LECs will have to make a one-time filing to allow them to assess charges for Voice over Internet Protocol (VoIP). We also estimate that an additional 2,840 competitive and incumbent LECs will have to file intrastate tariffs annually. Finally, we estimate that 2,840 competitive and incumbent LECs will have to make a one-time intrastate tariff filing to establish VoIP rates of interstate rate levels.

The information collected through a carrier's tariff is used by the Commission and state commissions to determine whether services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–1163 Filed 1–20–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that

does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 23, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), or via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

OMB Control Number: 3060–0584.

Title: Administration of U.S. Certified Accounting Authorities in Maritime Mobile and Maritime Mobile-Satellite Radio Services, FCC Forms 44 and 45.

Form Number(s): FCC Forms 44 and 45.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit organizations.

Number of Respondents and Responses: 25 respondents; 150 responses.

Estimated Time per Response: 1–3 hours.

Frequency of Response: Recordkeeping; On occasion, semi-annual, and annual reporting requirements; and Third-party disclosure.

Obligation To Respond: Mandatory. Statutory authority for this information collection (IC) is contained in 47 U.S.C 154(i) and 303(r).

Total Annual Burden: 150 hours.

Total Annual Cost: $375,000.00.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission has standards for accounting authorities in the maritime mobile and maritime-satellite radio services under 47 CFR part 3. The Commission uses these standards to determine the eligibility of applicants for certification as a U.S. accounting authority, to ensure compliance with the maritime mobile and maritime-satellite radio services, and to identify accounting authorities to the International Telecommunications Union (ITU). Respondents are entities seeking certification or those already certified to be accounting authorities.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–1165 Filed 1–20–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 23, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Judith B.Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1147.

Title: Wireless E911 Phase II Location Accuracy Requirements, Third Report and Order, FCC 11–107.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; business or other for-profit entities; Not-for-profit institutions and State, Local, or Tribal Government.

Number of Respondents: 4,898 respondents; 9,514 responses.

Estimated Time per Response: 5.5867143 hours (average).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 53,152 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission obtained OMB approval for this new collection in March 2011. The Commission is now seeking OMB approval for a revision to this information collection. The Commission adopted and released a Third Report and Order, FCC 11–107, PS Docket No. 07–114, which provides that new Commercial Mobile Radio Service (CMRS) providers, meeting the definition of covered CMRS providers in Section 20.18 and deploying networks subsequent to the effective date of the Third Report and Order that are not an expansion or upgrade of an existing CMRS network, must meet the handset-based location accuracy standard from the start. Consequently, the rule requires new CMRS providers launching new stand-alone networks during the eight-year implementation period for handset-based CMRS wireless licensees to meet the applicable handset-based location accuracy standard in effect of the time of deployment. Therefore, new rule section 20.18(h)(2)(iv) specifies that new CMRS providers must comply with

paragraphs (h)(2)((i–iii) of Section 20.18, which are the location accuracy requirements for handset-based carriers. OMB approved the information collection for those rule paragraphs, which the Second Report and Order adopted, on March 30, 2011, under OMB Control No. 3060–1147. The Commission announced OMB's approval and the effective date in 76 FR 23713 of the **Federal Register**.

As a result, under the new rule section adopted by Third Report and Order, all new CMRS providers in delivering emergency calls for Enhanced 911 service, must satisfy the handset-based location accuracy standard at either a county-based or Public Safety Answering Point (PSAP)-based geographic level. Similarly, in accordance with the new rule and under the paragraph provision of Section 20.18(h)(2)(iii), new CMRS providers may exclude up to 15 percent of the counties or PSAP areas they serve due to heavy forestation that limits handset-based technology accuracy in those counties or areas. Therefore, new CMRS providers will be required to file a list of the specific counties or portions of counties where they are utilizing their respective exclusions. In its September 2010 Second Report and Order, 75 FR 70604, the Commission found that permitting this exclusion properly but narrowly accounts for the known technical limitations of handset-based location accuracy technologies, while ensuring that the public safety community and the public at large are sufficiently informed of these limitations.

When they have begun deploying their new networks, the new CMRS providers must submit initial reports, as the Commission will announce after OMB approval of this revised information collection, with a list of the areas that they are permitted to exclude from the handset-based location accuracy requirements. Accordingly, the Commission will specify the procedures for electronic filing into PS Docket No. 07–114, consistent with the current OMB approved information collection for handset-based carriers, and new CMRS providers must send copies of the exclusion reports to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators.

Further, the rules adopted by the Commission's September 2010 Second Report and Order, 75 FR 70604, also require that, two years after January 18, 2011, wireless carriers provide confidence and uncertainty data on a per call basis to PSAPs. Because the new rule adopted by the Third Report and Order considers new CMRS providers as providers covered under the definition of CMR providers pursuant to section 20.18 of the Commission's rules, new CMRS providers will also be subject to the information collection requirement to provide this confidence and uncertainty data.

Additionally, in view of the amended location accuracy requirements and the timeframes and benchmarks for handset-based wireless carriers to comply with them, in its September 2010 Second Report and Order, 75 FR 70604, the Commission recognized that the waiver process is suitable to address individual or unique problems, where the Commission can analyze the particular circumstances and the potential impact to public safety. Thus, similarly, the supporting statement for this information collection revision recognizes that new CMRS providers might file waiver requests and, therefore, be subject to a collection and reporting requirement.

The Third Report and Order found that requiring all new CMRS network providers to comply with the Commission's handset-based location accuracy standard is consistent with the regulatory principle of ensuring technological neutrality. Providers deploying new CMRS networks are free to use network-based location techniques, or to combine network and handset-based techniques, to provide 911 location information, provided that they meet the accuracy criteria applicable to handset-based providers. Given the long-term goal of universal support for one location accuracy standard, the Commission believed that such a mandate allows appropriate planning and ensures that new technology will comply with the most stringent location accuracy standard that applies to existing technology.

Section 47 CFR 20.18(h)(2)(iv) requires that providers of new CMRS networks that meet the definition of covered CMRS providers under paragraph (a) of this section must comply with the requirements of paragraphs (h)(2)(i)
(iii) of this section. For this purpose, a ''new CMRS network'' is a CMRS network that is newly deployed subsequent to the effective date of the Third Report and Order in PS Docket No. 07–114 and that is not an expansion or upgrade of an existing CMRS network.

The information provided by wireless carriers deploying new CMRS networks to report the counties or PSAP service areas where the carriers cannot provide E911 location accuracy at either the county or the PSAP level will furnish the Commission, affected PSAPs, state and local emergency agencies, public safety organizations and other interested stakeholders the supplementary data necessary for public safety awareness of those areas where it is most difficult to measure location accuracy during the benchmark periods for handset-based wireless carriers.

The provision of confidence and uncertainty data to PSAPs by the new CMRS providers and the SSPs responsible for transporting that data between them and PSAPs will enhance the PSAPs' ability to efficiently direct first responders to the correct location of emergencies to achieve the emergency response goals of the nation in responding expeditiously to emergency crisis situations and in ensuring homeland security.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–1164 Filed 1–20–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0263; 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: Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form Extension—OMB No. 0990–0263—Office for Human Research Protections.

Abstract: The Federal Policy for the Protection of Human Subjects, known as the Common Rule, requires that before engaging in non-exempt human subjects research that is conducted or supported by a Common Rule department or agency, each institution must: (1) Hold an applicable assurance of compliance [Section 103(a)]; and (2) certify to the awarding department or agency that the application or proposal for research has been reviewed and approved by an IRB designated in the assurance [Sections 103(b) and (f)]. The Office for Human Research Protections is requesting a three-year extension of the Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form. That form is designed to promote uniformity among departments and agencies, and to help ensure common means of ascertaining institutional review board certifications and other reporting requirements relating to the protection of human subjects in research. Respondents are institutions engaged in research involving human subjects where the research is supported by HHS. Institutional use of the form is also relied upon by other federal departments and agencies that have codified or follow the Federal Policy for the Protection of Human Subjects (Common Rule). There are an estimated total of 25,000 human research studies supported each year, an average of 2 certifications per institution and an estimated one-half hour per certification, for a total burden of 12,000 hours. Data is collected as needed.

ESTIMATED ANNUALIZED BURDEN IN HOURS FOR IRB CERTIFICATION BURDEN

Form name	Number of respondents	Number of responses per respondent	Hours per response	Response burden hours
Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption	12,000	2	30/60	12,000

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–1188 Filed 1–20–12; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Preregistration is required for both public attendance and comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac*, email *nvpo@hhs.gov* or call (202) 690–5566 and provide name, organization, and email address.

DATES: The meeting will be held on February 7–8, 2012. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon they become available.

ADDRESSES: The meeting will be held at the U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: The National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 690–5566; Fax: (202) 690–4631; email: *nvpo@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The topics to be discussed at the NVAC meeting will include seasonal influenza, implementation of the National Vaccine Plan, and vaccine safety. The meeting agenda will be posted on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac* prior to the meeting.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the NVAC meeting, limited to five minutes per speaker, during the public comment periods on the agenda. Individuals who would like to submit written statements should email or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting.

Dated: January 17, 2012.

Mark Grabowsky,

Deputy Director, National Vaccine Program Office, Alternate Designated Federal Officer, National Vaccine Advisory Committee.

[FR Doc. 2012–1228 Filed 1–20–12; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Developmental Disabilities Research and Epidemiologic Studies, RFA DD12–001, Initial Review

Correction: This notice was published in the **Federal Register** on December 30, 2011, Volume 76, Number 251, page 82299. The date of the meeting has been changed to the following:

DATES: February 16, 2012 (Closed).

FOR FURTHER INFORMATION CONTACT: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 13, 2012.

John Kastenbauer,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–1191 Filed 1–20–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Interstate Referral Guide (IRG).

OMB No.: 0970–0209.

Description: The Intergovernmental Referral Guide (IRG) is a centralized and automated repository of state and tribal profiles, which contain high-level descriptions of each state and tribal child support enforcement (CSE) program. These profiles provide state and tribal CSE agencies, and foreign countries with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases.

Respondents: All state and tribal CSE agencies; foreign countries and Canadian provinces with federal reciprocity; and, with limited access, the general public.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intergovernmental Referral Guide: State Profile Guidance—States and Territories	54	18	0.3	292
Intergovernmental Referral Guide: State User Guide—Foreign Countries	26	2	0.1	5
Intergovernmental Referral Guide: Tribal Profile Guidance	52	18	0.3	281

Estimated Total Annual Burden Hours: 578.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: (202) 395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–879 Filed 1–20–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[CFDA Number: 93.164]

Loan Repayment Program for Repayment of Health Professions Educational Loans; Announcement Type: Initial

Dates:

Key Dates: February 17, 2012 first award cycle deadline date; August 17, 2012 last award cycle deadline date; September 14, 2012 last award cycle deadline date for supplemental loan repayment program funds; September 30, 2012 entry on duty deadline date.

I. Funding Opportunity Description

The Indian Health Service (IHS) estimated budget request for Fiscal Year (FY) 2012 includes $20,179,074 for the IHS Loan Repayment Program (LRP) for health professional educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals.

This program is authorized by Section 108 of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended. The IHS invites potential applicants to request an application for participation in the LRP.

II. Award Information

The estimated amount available is approximately $20,179,074 to support approximately 453 competing awards averaging $44,510 per award for a two year contract. One year contract continuations will receive priority consideration in any award cycle. Applicants selected for participation in the FY 2012 program cycle will be expected to begin their service period no later than September 30, 2012.

III. Eligibility Information

1. Eligible Applicants

Pursuant to Section 108(b), to be eligible to participate in the LRP, an individual must:

(1) (A) Be enrolled—

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

(B) Have a degree in a health profession and a license to practice in a state; and

(2) (A) Be eligible for, or hold an appointment as a Commissioned Officer in the Regular Corps of the Public Health Service (PHS); or

(B) Be eligible for selection for service in the Regular Corps of the PHS; or

(C) Meet the professional standards for civil service employment in the IHS; or

(D) Be employed in an Indian health program without service obligation; and

(E) Submit to the Secretary an application for a contract to the LRP. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS LRP and provides in pertinent part as follows:

(a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the Loan Repayment Program) in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

Section 4(10) of the IHCIA provides that:

''Health Profession'' means *allopathic medicine,* family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, *or any other health profession.*

For the purposes of this program, the term ''Indian health program'' is defined in Section 108(a)(2)(A), as follows:

(A) The term Indian health program means any health program or facility funded, in whole or in part, by the Service for the benefit of Indians and administered—

(i) Directly by the Service;

(ii) By any Indian Tribe or Tribal or Indian organization pursuant to a contract under—

(I) The Indian Self-Determination Act, or

(II) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(iii) By an urban Indian organization pursuant to Title V of this act.

Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS to determine specific health professions for which IHS LRP contracts will be awarded. The list of priority health professions that follows is based upon the needs of the IHS as well as upon the needs of American Indians and Alaska Natives.

(a) Medicine: Allopathic and Osteopathic.

(b) Nurse: Associate, B.S., and M.S. Degree.

(c) Clinical Psychology: Ph.D. and Psy.D.

(d) Counseling Psychology: Ph.D.

(e) Social Work: Masters level only.

(f) Chemical Dependency Counseling: Baccalaureate and Masters level.

(g) Counseling: Masters level only.

(h) Dentistry: DDS and DMD.

(i) Dental Hygiene.

(j) Dental Assistant: Certified.

(k) Pharmacy: B.S., Pharm.D.

(l) Optometry: O.D.

(m) Physician Assistant, Certified.

(n) Advanced Practice Nurses: Nurse Practitioner, Certified Nurse Midwife, Registered Nurse Anesthetist (Priority consideration will be given to Registered Nurse Anesthetists.).

(o) Podiatry: D.P.M.

(p) Physical Rehabilitation Services: Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Audiology: M.S. and D.P.T.

(q) Diagnostic Radiology Technology: Certificate, Associate, and B.S.

(r) Medical Laboratory Scientist, Medical Technology, Medical Laboratory Technician: Associate, and B.S.

(s) Public Health Nutritionist/ Registered Dietitian.

(t) Engineering (Environmental): B.S. (Engineers must provide environmental engineering services to be eligible.).

(u) Environmental Health (Sanitarian): B.S.

(v) Health Records: R.H.I.T. and R.H.I.A.

(w) Certified Professional Coder: AAPC or AHIMA.

(x) Respiratory Therapy.

(y) Ultrasonography.

(z) Acupuncturists: Licensed.

(aa) Chiropractors: Licensed.

(bb) Naturopathic Medicine: Licensed.

2. Cost Sharing or Matching

Not applicable.

3. Other Requirements

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for FY 2012. These priorities will remain in effect until superseded.

IV. Application and Submission Information

1. Address To Request Application Package

Application materials may be obtained online at *http://www.loanrepayment.ihs.gov/* or by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, Telephone: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

2. Content and Form of Application Submission

Applications must be submitted on the form entitled ''Application for the

Indian Health Service Loan Repayment Program,'' identified with the Office of Management and Budget approval number of OMB #0917–0014, Expiration Date 02/29/2012.

3. Submission Dates and Times

Completed applications may be submitted to the IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852. Applications for the FY 2012 LRP will be accepted and evaluated monthly beginning February 17, 2012, and will continue to be accepted each month thereafter until all funds are exhausted for FY 2012. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month until August 17, 2012.

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.).

Applications received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2012, will be notified in writing.

4. Intergovernmental Review

This program is not subject to review under Executive Order 12372.

5. Funding Restrictions

Not applicable.

6. Other Submission Requirements

All applicants must sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary, and submit a signed affidavit attesting to the fact that they have been informed of the relative merits of the U.S. PHS Commissioned Corps and the Civil Service as employment options.

V. Application Review Information

1. Criteria

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites may include the following:

(a) Historically critical shortages caused by frequent staff turnover;

(b) Current unmatched vacancies in a health profession discipline;

(c) Projected vacancies in a health profession discipline;

(d) Ensuring that the staffing needs of Indian health programs administered by an Indian Tribe or Tribal health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(e) Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.

Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.

2. Review and Selection Process

Loan repayment awards will be made only to those individuals serving at facilities which have a site score of 70 or above during the first quarter and the second month of the second quarter of FY 2012, if funding is available.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, will be selected.

(a) An applicant's length of current employment in the IHS, Tribal, or urban program.

(b) Availability for service earlier than other applicants (first come, first served).

(c) Date the individual's application was received.

3. Anticipated Announcement and Award Dates

Not applicable.

VI. Award Administration Information

1. Award Notices

Notice of awards will be mailed on the last working day of each month. Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

2. Administrative and National Policy Requirements

Applicants may sign contractual agreements with the Secretary for two years. The IHS may repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective. The effective date of the contract is calculated from the date it is signed by the Secretary or his/her delegate, or the IHS, Tribal, urban, or Buy Indian health center entry-on-duty date, whichever is more recent.

In addition to the loan payment, participants are provided tax assistance payments in an amount not less than 20 percent and not more than 39 percent of the participant's total amount of loan repayments made for the taxable year involved. The loan repayments and the tax assistance payments are taxable income and will be reported to the Internal Revenue Service (IRS). The tax assistance payment will be paid to the IRS directly on the participant's behalf. LRP award recipients should be aware that the IRS may place them in a higher tax bracket than they would otherwise have been prior to their award.

3. Contract Extensions

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts may receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal withholding.

VII. Agency Contacts

Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, Telephone: (301) 443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

VIII. Other Information

IHS Area Offices and Service Units that are financially able are authorized to provide additional funding to make awards to applicants in the LRP, but not to exceed $35,000 a year plus tax assistance. All additional funding must be made in accordance with the priority system outlined below. Health

professions given priority for selection above the $20,000 threshold are those identified as meeting the criteria in 25 U.S.C. 1616a(g)(2)(A) which provides that the Secretary shall consider the extent to which each such determination:

(i) Affects the ability of the Secretary to maximize the number of contracts that can be provided under the LRP from the amounts appropriated for such contracts;

(ii) Provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) Provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the LRP.

Contracts may be awarded to those who are available for service no later than September 30, 2012, and must be in compliance with any limits in the appropriation and Section 108 of the IHCIA not to exceed the amount authorized in the IHS appropriation (up to $32,000,000 for FY 2012). In order to ensure compliance with the statutes, Area Offices or Service Units providing additional funding under this section are responsible for notifying the LRP of such payments before funding is offered to the LRP participant. Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that Service Unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Chinle Service Unit identifies supplemental monies for pharmacists. The Chinle Service Unit consists of two facilities, namely the Chinle Comprehensive Health Care Facility and the Tsaile PHS Indian Health Center.

The national ranking will be used for the Chinle Comprehensive Health Care Facility (Score = 44) and the Tsaile PHS Indian Health Center (Score = 46). With a score of 46, the Tsaile PHS Indian Health Center would receive priority over the Chinle Comprehensive Health Care Facility.

Dated: January 12, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–1211 Filed 1–20–12; 8:45 a.m.]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Institute on Drug Abuse (NIDA), National Institutes of Health, HHS.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, NIDA has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted within 30 days after publication in FR.

ADDRESSES: Written comments may be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NIH Desk Officer, by Email to *OIRA_submission@omb.eop.gov,* or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Genevieve deAlmeida-Morris, Health Research Evaluator, Office of Science Policy and Communications, National Institute on Drug Abuse, 6001 Executive Boulevard, Bethesda, MD 20892–9557, or call non-toll-free number (301) 594–6802 or Email your request, including your address to *dealmeig@nida.nih.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

No comments were received in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide NIDA's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 12.

Burden hours: 2,500,000.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 4.

Respondents: 740.

Annual responses: 740.

Frequency of Response: Once per request

Average minutes per response: 50.

Burden hours: 516.

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 Office of Management and Budget control number.

Dated: January 13, 2012.

Glenda Conroy,

Executive Officer (OM Director), NIDA.

[FR Doc. 2012–1267 Filed 1–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Enhancement of Cancer Imaging and Treatment With Somatostatin Analogs

Description of Technology: Available for licensing is a novel method using short-term treatment with a glucocorticoid antagonist to increase the expression of somatostatin receptors in tumor cells and improve rates of tumor identification in patients with high cortisol levels.

Tumors express up to five different receptors for somatostatin analogs on their surface. This enables somatostatin and its analogs to bind to the tumor cells. When the compound has a radioactive or radiopharmaceutical ''tag'' it can allow the cell to be killed (via radiation) or imaged (via the radiopharmaceutical). Somatostatin analogs have variable affinity for the five somatostatin receptors (types 1–5). As a result, if tumors express less of the more avid receptors, imaging or treatment with the analogs is less likely to be successful. There is a large variability in functional type 2 receptor expression in these tumors. High cortisol levels (such as those seen in Cushing's syndrome) cause the type 2 receptor level to decrease, which (with type 5) is the primary binding site for ^{111}1n-DTPA-D-Phe-pentetreotide, which is used to image tumors (in an octreotide nuclear medicine scan).

Potential Commercial Applications: Tumor imaging and radiopharmaceutical therapy using somatostatin analogs.

Competitive Advantages: Allows conversion of a negative to positive octreotide scan in patients with active hypercortisolism.

Development Stage: Pilot.

Inventors: Lynnette Nieman (NICHD), *et al.*

Intellectual Property: HHS Reference No. E–252–2011/0—U.S. Provisional Application No. 61/533,664 filed 12 Sep 2011.

Licensing Contact: Patrick McCue, Ph.D.; (301) 435–5560; *mccuepat@mail.nih.gov.*

PARP Inhibitor/NO Donor Dual Prodrugs as Anticancer Agents

Description of Technology: Scientists at NIH have developed a hybrid prodrug molecule with enhanced biological activity as anticancer agent. Novel cancer therapeutic strategies are in high demand. Diazeniumdiolate-based nitric oxide (NO)-releasing prodrugs are a growing class of promising anticancer agents. Poly (ADP-ribose) polymerase (PARP) inhibitors have also emerged as a promising class of therapeutic compounds for cancer. The two-component prodrug described in the instant invention is expected to deliver DNA damaging agent (NO release) along with an inhibitor of DNA repair (PARP inhibitor) simultaneously to a cancer cell. The prodrugs are activated by glutathione/glutathione S-transferase (GSH/GST) and release cytotoxic NO and a PARP inhibitor in the target cancer cell. The high levels of GSH/GST are often a feature of cancer cells. The compound is predicted to have strong synergy with other anticancer therapeutics.

Potential Commercial Applications

- Cancer therapeutics.
- Cancer therapeutics in combination with other anticancer therapies.

Competitive Advantages: Combination of DNA damaging agent and DNA repair inhibitor in one molecule has advantage over both individual drug treatments.

Development Stage

- Prototype.
- Early-stage.
- Pre-clinical.
- In vitro data available.

Inventors: Anna E. Maciag, Larry K. Keefer, and Joseph E. Saavedra (NCI).

Publication: PARP Inhibitor/NO Donor Dual Prodrugs as Anticancer Agents, manuscript in preparation.

Intellectual Property: HHS Reference No. E–220–2011/0—U.S. Patent Application No. 61/549,862 filed 21 Oct 2011.

Related Technologies

- HHS Reference No. E–093–1996/3—U.S. Patent No. 6,610,660 issued 26 Aug 2003.
- HHS Reference No. E–025–2010/0—PCT Application No. PCT/US2010/056446 filed 12 Nov 2010, which published as WO 2011/060215 on 19 May 2011

Licensing Contact: Betty B. Tong, Ph.D.; (301) 594–6565; *tongb@mail.nih.gov*.

Small Molecule Drugs for Treatment of Ataxia Telangiectasia or DNA Damage

Description of Technology: Ataxia telangiectasia (A–T) is a rare neurodegenerative disease that is caused by mutations in the Ataxia Telangiectasia Mutated (ATM) gene, which is the chief activator of the cellular response to double stranded DNA breaks. Defects in this gene can lead to abnormal cell death, particularly in the brain and in the immune system, and the disease is also characterized by hypersensitivity to radiation and other DNA-damaging agents, as well as a predisposition to lymphoma. There is currently no effective treatment for this disease.

Investigators at the National Human Genome Research Institute (NHGRI) have shown that ATM-null cells treated with rottlerin, a small molecule protein kinase inhibitor, respond to double stranded DNA breaks by activating an

alternate DNA repair pathway. Similarly, ATM-null mice demonstrate increased protection from radiation when treated with this compound. Thus, rottlerin or related compounds may be an effective treatment for A–T or other diseases resulting from DNA damage.

Potential Commercial Applications: Therapy for ataxia telangiectasia or other diseases resulting from DNA damage.

Competitive Advantages

- There is currently no therapy for ataxia telangiectasia.
- Rottlerin is a readily-obtained, small molecule compound.

Development Stage

- Early-stage.
- In vitro data available.
- In vivo data available (animal).

Inventors: Wei Zheng *et al.* (NCTT).

Intellectual Property: HHS Reference No. E–038–2011/0—U.S. Provisional Application No. 61/524,177 filed 16 Aug 2011.

Licensing Contact: Tara L. Kirby, Ph.D.; (301) 435–4426; *tarak@mail.nih.gov*.

Transgenic Human Interleukin-21 Mouse Model

Description of Technology: Available for licensing is a mouse model that constitutively expresses human interleukin-21 (IL–21). Traditionally, human IL–21 transgenic mouse models are difficult to produce as those with high IL–21 levels exhibit growth retardation and die before sexual maturity. The investigators generated transgenic mice that express human IL–21, which can stimulate murine cells *in vitro* thereby providing an accurate model to elucidate IL–21's role in immunity, immune disorders, and cancer.

IL–21 is a type I cytokine whose receptor is expressed on T, B, and natural killer cells. IL–21 has pleiotropic actions ranging from augmenting the proliferation of T cells to driving the differentiation of B cells into memory cells and terminally differentiated plasma cells. Moreover, IL–21 has anti-tumor activity by augmenting natural killer cell activity. This mouse model allows studying human IL–21 in vivo and its role in a variety of diseases such as autoimmunity, immunodeficiency, allergy, and cancer.

Potential Commercial Applications

- Model to study human IL–21 in vivo.
- Research tool to elucidate IL–21's role in T, B, and natural killer cell function and regulating antibody production.
- Model to study IL–21's pathology in autoimmunity, immunodeficiency, allergy, and cancer.

Competitive Advantages: Mouse model that constitutively expresses human IL–21, without the negative side effects of growth retardation and high toxicity present in other human IL–21 transgenic mice.

Development Stage

- Pre-clinical.
- In vivo data available (animal).

Inventors: Warren Leonard and Katsutoshi Ozaki (NHLBI).

Publication: Ozaki K, *et al.* Regulation of B cell differentiation and plasma cell generation by IL–21, a novel inducer of Blimp-1 and Bcl-6. J Immunol. 2004 Nov 1;173(9):5361–5371. [PMID 15494482].

Intellectual Property: HHS Reference No. E–231–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technologies

- HHS Reference No. E–211–2002/1—U.S. Patent 7,332,645 issued 19 Feb 2008; U.S. Patent Application No. 11/958,540 filed 18 Dec 2007.
- HHS Reference No. E–120–2003/1—U.S. Patent 7,993,919 issued 09 Aug 2011.
- HHS Reference No. E–120–2003/2—U.S. Patent 7,378,276 issued 27 May 2008; U.S. Patent Application No. 12/126,166 filed 23 May 2008.
- HHS Reference No. E–137–2002/0—U.S. Patent Application No. 10/508,978 filed 19 Nov 2004; U.S. Patent Application No. 12/651,858 filed 04 Jan 2010.

Licensing Contact: Jennifer Wong; (301) 435–4633; *wongje@mail.nih.gov*.

Method for Producing Significant Amounts of B19 Virus for Development of Killed or Attenuated Vaccines

Description of Technology: Human parvovirus B19 (B19) is a common infection of children and adults and is the cause of fifth disease. B19 selectively infects erythroid progenitor cells of bone marrow, fetal liver and a small number of specialized cell lines. These specific cell lines demonstrate limited infectibility and commonly produce little or no virus following initial inoculation with B19. Current methods for producing infectious B19 require phlebotomy of infrequently available infected donors. The available technology describes a method of producing pure populations of human erythroid progenitor cells that are fully permissive to B19 infection. The ability to efficiently generate significant amounts of infectious B19V in cells is useful for the development of killed or attenuated vaccines, therapeutics and efficient diagnostic tools for prevention and treatment of B19V.

Potential Commercial Applications

- Human parvovirus B19 diagnostic.
- Vaccine manufacture.
- Research and development of anti-parvovirus agents.

Competitive Advantages: Method produces pure populations of human erythroid progenitor cells that are fully permissive of B19 infection.

Development Stage

- Pre-clinical.
- In vitro data available.

Inventors: Susan Wong and Neal S. Young (NHLBI).

Publications

1. Giarratana MC, *et al.* Ex vivo generation of fully mature human red blood cells from hematopoietic stem cells. Nat Biotechnol. 2005 Jan; 23(1):69–74. [PMID 15619619].
2. Freyssinier JM, *et al.* Purification, amplification and characterization of a population of human erythroid progenitors. Br J Haematol. 1999 Sep; 106(4):912–922. [PMID 10519992].

Intellectual Property: HHS Reference No. E–188–2006/0—U.S. Patent Application No. 12/301,960 filed 21 Nov 2008.

Licensing Contact: Kevin W. Chang, Ph.D.; (301) 435–5018; *changke@mail.nih.gov*.

Collaborative Research Opportunity: The NHLBI Hematology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize novel methods to produce parvovirus B19 and use as diagnostic or vaccine. For collaboration opportunities, please contact Dr. Neal Young at (301) 496–5093 or *youngns@mail.nih.gov*.

HIV Therapeutics Utilizing Peptide Secreting Commensal Bacteria

Description of Technology: Available for licensing and commercial development is a patent estate covering genetically engineered commensal bacteria compositions and their methods of use that secrete HIV infectivity interfering peptides with the aid of co-expressed translocation mediators such as *HylB, HylD* or t*olC* gene products. The bacteria can be, for example, *Escherichia coli,* and are preferably those that colonize the gastrointestinal or genitourinary tracts. The secreted anti-HIV peptide can be a

functional inhibitory fragment from the C-terminus of HIV, SHIV or SIV, or an inhibitory peptide derived from the N-terminus receptor-binding domain of SIV gp41, HIV–1 gp41, or HIV–2 gp41. The secreted anti-HIV peptide can also be a peptide from the allosteric domain of gp120, an extracellular loop of CCR5, an anti-CD4 immunoglobulin, a mimetic of CD4, an alpha-defensin or theta-defensin, a CD38 fragment homologous to the V3 loop of gp120, polphemusin II (a CXCR4 antagonist), a RANTES peptide that binds to CCR5 or an HIV surface binding peptide such as cyanovirin.

Potential Commercial Applications: HIV therapeutics.

Competitive Advantages: Utilizes naturally occurring commensal bacteria.

Development Stage

- Pre-clinical.
- In vivo data available (animal).

Inventor: Dean H. Hamer (NCI).

Publications

1. Lagenaur LA, *et al.* Prevention of vaginal SHIV transmission in macaques by a live recombinant Lactobacillus. Mucosal Immunol. 2011 Nov;4(6):648–657. [PMID 21734653].

2. Rao S, *et al.* Toward a live microbial microbicide for HIV: commensal bacteria secreting an HIV fusion inhibitor peptide. Proc Natl Acad Sci U S A. 2005 Aug 23;102(34):11993–11998. [PMID 16040799].

Intellectual Property

HHS Reference No. E–233–2004/0—

- U.S. Patent Application No. 11/710,512 filed 26 Feb 2007.
- Various international issued patents.

Licensing Contact: Michael Shmilovich, Esq.; (301) 435–5019; *shmilovm@mail.nih.gov*.

Dated: January 17, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–1264 Filed 1–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thioxothiazolidinone Derivatives—A Novel Class of Anti Cancer Agents

Description of Technology: The invention provides for a novel class of heterocyclic compounds (*i.e.* thioxothiazolidinone derivatives) that exhibit anticancer activity in a unique mechanism. More specifically, the compounds of the invention act as inhibitors of the enzyme human tyrosyl DNA phosphodiesterase1 (Tdp1), a DNA repair enzyme involved in topoisomerase1 (Top1) mediated DNA damage, such as damage induced by the Top1 inhibitors and chemotherapeutic agents, camptothecins. As such, these compounds can serve as potentiators of camptothecins. The experimental data indeed point at a synergistic effect achieved in a combination therapy of the thioxothiazolidinone derivatives of the invention and the established anticancer agents camptothecins. Moreover, due to this synergistic effect, a lower therapeutic dose of the latter may be needed, resulting in reduced side effects. In addition, it is possible that the Tdp1 inhibitors of the invention may be effective as anti tumor agents on their own. This is based on the fact that Tdp1 is involved also in repairing DNA damage resulting from oxygen radicals, and the observation that tumors contain excess free radicals.

Potential Commercial Applications

- Effective cancer therapy in combination with camptothecins.
- Cancer therapy as standalone anti cancer agents.

Competitive Advantages: The compounds of the invention act in unique mechanism that can enhance the therapeutic efficacy of the anticancer drugs camptothecins, and at the same time can serve as standalone anticancer agents.

Development Stage: In vitro data available.

Inventors: Yves G. Pommier (NCI) *et al.*

Publications

1. Marchand C, *et al.* Identification of phosphotyrosine mimetic inhibitors of human tyrosyl-DNA phosphodiesterase I by a novel AlphaScreen high-throughput assay. Mol Cancer Ther. 2009 Jan;8(1):240–248. [PMID 19139134].

2. Dexheimer TS, *et al.* Tyrosyl-DNA phosphodiesterase as a target for anticancer therapy. Anticancer Agents Med Chem. 2008 May;8(4):381–389. [PMID 18473723].

3. Dexheimer TS, *et al.* 4–Pregnen-21-ol-3,20-dione-21-(4-bromobenzenesufonate) (NSC 88915) and related novel steroid derivatives as tyrosyl-DNA phosphodiesterase (Tdp1) inhibitors. J Med Chem. 2009 Nov 26;52(22): 7122–7131. [PMID 19883083].

Intellectual Property: HHS Reference No. E–239–2011/0—U.S. Provisional Patent Application No. 61/545,308 filed 10 Oct 2011.

Licensing Contact: Uri Reichman, Ph.D., MBA; (301) 435–4616; *reichmau@mail.nih.gov.*

Monospecific and Bispecific Human Monoclonal Antibodies Targeting IGF–II

Description of Technology: The type 1 insulin-like growth factor (IGF) receptor (IGF1R) is over-expressed by many tumors and mediates proliferation, motility, and protection from apoptosis. Agents that inhibit IGF1R expression or function can potentially block tumor growth and metastasis. Its major ligands, IGF–I, and IGF–II are over-expressed by multiple tumor types. Previous studies indicate that inhibition of IGF–I, and/or IGF–II binding to its cognizant receptor negatively modulates signal transduction through the IGF pathway and concomitant cell proliferation and growth. Therefore, use of humanized or fully human antibodies against IGFs represents a valid approach to inhibit tumor growth. The present invention discloses two monoclonal antibodies, designated m610.27 and m630, and a bispecific monoclonal antibody, m660, generated by linking domains from m610.27 and m630. All three antibodies display high affinities for IGF–I and IGF–II in the pM to nM range. The antibodies inhibited signal transduction mediated by the IGF–1R interaction with IGF–I and IGF–II and blocked phosphorylation of IGF–IR and the

insulin receptor. m610.27 and m630 are the first pair of human antibodies that target nonoverlapping epitopes on IGF–II. All three antibodies in an IgG1 or IgG1-like format could lead to irreversible elimination of IGF–II from circulation making it a viable candidate for cancer treatment.

Potential Commercial Applications

- Therapeutic for the treatment of various human diseases associated with aberrant cell growth and motility such as breast, prostate, and leukemia cancers.
- Research reagent to study IGF–I and/or IGF–II binding and its association with tumor growth.

Competitive Advantages

- m610.27 and m630 are the first characterized antibodies that target nonoverlapping epitopes on IGF–II.
- m660 was generated from two domains; one each from m610.27 and m630.
- Small size of the m610.27 and m630 domains prevent overlapping in binding to IGF–II.

Development Stage

- Pre-clinical.
- In vitro data available.

Inventors: Dimiter S Dimitrov, Weizao Chen, Yang Feng (NCI).

Intellectual Property: HHS Reference No. E–212–2011—U.S. Provisional Application No. 61/548,164 filed 17 Oct 2011.

Related Technologies

- HHS Reference No. E–217–2005/2—U.S. Patent No. 7,824,681 issued 02 Nov 2010; U.S. Patent Application No. 12/889,345 filed 23 Sep 2010.
- HHS Reference No. E–336–2005/0—U.S. Patent Application No. 12/296,328 filed 07 Oct 2008.
- HHS Reference No. E–232–2009/0—PCT Application No. PCT/US2010/051784 filed 07 Oct 2010.
- HHS Reference No. E–068–2011/0—U.S. Provisional Application No. 61/474,664 filed 12 Apr 2011.

Licensing Contact: Whitney Hastings; (301) 451–7337; *hastingw@mail.nih.gov.*

Collaborative Research Opportunity: The NCI CCR Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Genetic Interactions That Predict Attention Deficit Hyperactivity Disorder Outcome and Severity

Description of Technology: Genotyping of attention deficit hyperactivity disorder (ADHD) linked chromosomal regions containing single nucleotide polymorphisms (SNPs) was used by researchers at the National Human Genome Research Institute (NHGRI) to discover gene interactions that increase the risk of developing ADHD and predict ADHD severity.

NHGRI researchers discovered an ADHD linked gene interaction between the latrophilin 3 (*LPHN3*) gene and a haplotype on chromosome 11q that contains the gene coding for the dopamine receptor D2 (*DRD2*) and neural cell adhesion molecule 1 (*NCAM1*). In a similar invention, mutations in *LPHN3* were shown to increase the risk of developing ADHD (HHS E–312–2006, TAB 1504). Expanding on those findings, this invention describes an interaction between *LPHN3* and *11q* that not only doubles the risk of developing ADHD, but also the severity of ADHD. Furthermore, the *LPHN3–11q* interaction correlates with patient response to therapeutic treatments.

In summary, this invention can be used to develop biomarkers for determining susceptibility to and severity of ADHD, as well as, developing theranostic assays for determining prognosis of ADHD treatments. In addition, signaling pathways delineated from these genetic sites can be used to develop better ADHD therapeutics.

Potential Commercial Applications

- Biomarkers for ADHD susceptibility and severity.
- Prognostic assays.
- Personalized treatment options.

Competitive Advantages: Improved prediction of ADHD susceptibility, severity, and possibly patient response to treatment.

Development Stage

- Early-stage.
- In vivo data available (human).

Inventors: Maximilian Muenke, Mauricio Arcos-Burgos, and Maria T. Acosta (NHGRI).

Publications

1. Jain M, *et al.* A cooperative interaction between LPHN3 and 11q doubles the risk for ADHD. Mol Psychiatry. 2011 May 24. (Epub ahead of print) [PMID: 21606926].

2. Arcos-Burgos M and Muenke M. Toward a better understanding of ADHD: LPHN3 gene variants and the susceptibility to develop ADHD. Atten Defic Hyperact Disord. 2010 Nov;2(3):139–147. [PMID: 21432600].

Intellectual Property: HHS Reference No. E–187–2011/0—U.S. Provisional Application No. 61/505,864 filed on 08 July 2011.

Related Technology: HHS Reference No. E–312–2006/0—U.S. Patent No. 8,003,406 issued on 23 August 2011.

Licensing Contact: Charlene Sydnor, Ph.D.; (301) 435–4689; *sydnorc@mail.nih.gov.*

Modulating Autophagy as a Treatment for Lysosomal Storage Diseases

Description of Technology: Researchers at NIAMS have developed a technology for treatment of lysosomal storage diseases by inhibition of autophagy. Pompe disease is an example of a genetic lysosomal storage disease caused by a reduction or absence of acid alpha-glucosidase (GAA). Patients with Pompe disease have a lysosomal buildup of glycogen in cardiac and skeletal muscle cells and severe cardiomyopathy and skeletal muscle myopathy. Treatment of Pompe disease by GAA enzyme replacement therapy is quite ineffective for the skeletal muscle myopathy. Skeletal muscle resistance to therapy is associated with increased cellular buildup of autophagic debris. Inactivation of autophagy results in effective GAA replacement therapy and a reduction in glycogen back to normal levels. This technology provides a novel approach for the treatment of Pompe disease as well as other diseases where autophagy is a critical contributor to disease development.

Potential Commercial Applications

- Development of tools for autophagy suppression and treatment of a variety of diseases.
- Development of chemical inhibitors of autophagy.
- Development of animal models to study lysosomal storage diseases.

Competitive Advantages

- This technology is the first use of autophagy disablement to reverse an intracellular pathology.
- More effective than enzyme replacement therapy alone for the treatment of the lysosomal storage disease, Pompe disease.

Development Stage: In vivo data available (animal).

Inventors: Nina Raben, Cynthia N. Schreiner, Paul H. Plotz, Shoichi Takikita, Tao Xie, Rebecca Baum (NIAMS).

Publications

1. Raben N, *et al.* Suppression of autophagy permits successful enzyme replacement therapy in a lysosomal storage disorder—murine Pompe disease. Autophagy. 2010 Nov;6(8):1078–1089. [PMID 20861693].

2. Raben N, *et al.* Suppression of autophagy in skeletal muscle uncovers the accumulation of ubiquitinated proteins and their potential role in muscle damage in Pompe disease. Hum Mol Genet. 2008 Dec 15;17(24):3897–3908. [PMID 18782848].

Intellectual Property: HHS Reference No. E–210–2009/0—PCT Application No. PCT/US2010/047730 filed 02 Sep 2010.

Licensing Contact: Jaime Greene, M.S.; (301) 435–5559; *greenejaime@mail.nih.gov.*

Collaborative Research Opportunity: The National Institutes of Health is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the technology for disabling autophagy as a treatment for lysosomal storage diseases. For collaboration opportunities, please contact Cecilia Pazman at *pazmance@mail.nih.gov.*

Dated: January 17, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–1266 Filed 1–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Risk Prevention and Health Behavior.

Date: February 14–15, 2012.

Time: 10 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: Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–1717, *henryrr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Clinical and Translational Imaging Applications.

Date: February 15, 2012.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Antonio Sastre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, (301) 435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–11–044: Indo-US Collaborative Program on Low-Cost Medical Devices.

Date: February 15–16, 2012.

Time: 11 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: David R Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, (301) 435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: February 16–17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: February 16–17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Biomedical Imaging Technology–A

Date: February 16–17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Behrouz Shabestari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function E Study Section.

Date: February 16–17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Molecular and Cellular Hematology.

Date: February 16, 2012.

Time: 8 a.m. to 7 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: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, (301) 495–1213, *espinozala@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: February 16–17, 2012.

Time: 8:30 a.m. to 4 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: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, (301) 435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: February 16–17, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel and Restaurant, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *steeleln@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–1249 Filed 1–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–1145; Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: E-Notification of Application/Petition Acceptance, Form G–1145.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until March 23, 2012.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 or via email at *USCISFRComment@dhs.gov.* When submitting comments by email, please make sure to add OMB Control No. 1615–0109 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form G–1145. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard,* or call the USCIS National Customer Service Center at 1–(800) 375–5283 (TTY 1–(800) 767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* E-Notification of Application/Petition Acceptance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1145; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. If an applicant or petitioner wants to be notified via email and/or text message on their cell phone that their application or petition has been accepted, they are requested to provide their email address and/or cell phone number on the E-Notification of Application/Petition Acceptance, Form G–1145, and attach the form to the application or petition.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 3 minutes (0.05 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: January 18, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–1183 Filed 1–20–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–01]

Notice of Proposed Information Collection: Multifamily Supplemental Information to Application for Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 23, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service 1–(800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Catherine Brennan, Division Director, Housing Assistance Policy Division, Multifamily Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–6732 (this is not a toll free number) for copies of the

proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Supplemental Information to Application for Assistance.

OMB Control Number, if applicable: 2502–0581.

Description of the need for the information and proposed use: Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Agency form numbers, if applicable: HUD Form 92006.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The public reporting burden for this collection of information is estimated as the number of hours needed to prepare the information collection is 91,195.50 annually, the estimated number of respondents is 364,782 annually, the frequency of response is monthly generating 240,756 responses annually, and the estimated time per response is approximately 10 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: January 13, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–1242 Filed 1–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N0002; FXES11130100000F5–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for recovery permits to conduct enhancement of survival activities with endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by February 22, 2012.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Grant Canterbury, Fish and Wildlife Biologist, at the above address or by telephone (503–231–2071) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–61798A

Applicant: David Monnin, Terra Science, Inc., Portland, Oregon

The applicant requests a new permit to take (collect individuals and cysts) the vernal pool fairy shrimp (*Branchinecta lynchi*), and remove and reduce to possession (harvest seed) *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) in conjunction with monitoring and population studies in Jackson County, Oregon, for the purpose of enhancing the species' survival.

Permit Number: TE–054395

Applicant: Bureau of Land Management, Medford, Oregon

The permittee requests an amendment to an existing permit to remove and reduce to possession (collect and cultivate plants, plant parts, and seed) *Lomatium cookii* (Cook's lomatium) in conjunction with recovery efforts in

Jackson County, Oregon, for the purpose of enhancing the species' survival. The permit previously covered removal and reduction to possession of *Fritillaria gentneri* (Gentner's fritillary), for which a notice was published in the **Federal Register** on May 30, 2002 (67 FR 37855).

Permit Number: TE–61788A

Applicant: Kyle Van Houtan, National Marine Fisheries Service, Honolulu, Hawaii

The applicant requests a new permit to take (tag, tissue sample, collect biotelemetry data) the green sea turtle (*Chelonia mydas*) and hawksbill sea turtle (*Eretmochelys imbricata*) in conjunction with monitoring and population studies on Pacific islands nesting beaches (Midway Atoll, Johnston Atoll, Palmyra Atoll, Kingman Reef, Howland Island, Baker Island, Jarvis Island, Wake Island, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and Hawaii) for the purpose of enhancing the species' survival.

Permit Number: TE–63568A

Applicant: Jason Clinch, Terra Science, Inc., Portland, Oregon

The applicant requests a new permit to take (collect individuals and cysts) the vernal pool fairy shrimp (*Branchinecta lynchi*), and remove and reduce to possession (harvest seed) *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) in conjunction with monitoring and population studies in Jackson County, Oregon, for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: January 13, 2012.

Richard R. Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–1189 Filed 1–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0112–9227; 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 31, 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 Street NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by February 7, 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.

CONNECTICUT

Fairfield County

United States Post Office, Westport, Connecticut, 154 Post Rd. E., Westport, 12000001

Hartford County

Vine Street Apartment Buildings, 4–48 Vine St, Hartford, 12000002

IOWA

Story County

Colonials Club House, 217 Ash Ave., Ames, 12000003

LOUISIANA

Rapides Parish

St. Philip's Episcopal Church, 414 Clara St., Boyce, 12000004

MINNESOTA

Goodhue County

Oakwood Cemetery, 1258 Cherry St., Red Wing, 12000005

Kandiyohi County

Lakeland Hotel, 407 Litchfield Ave. SW., 302 4th St. SW., Willmar, 12000006

NEW YORK

Albany County

Slingerlands Historic District, New Slingerlands & Mullens Rds., Bridge St., Slingerlands, 12000007

Bronx County

St. Stephen's Methodist Church, 146 W. 228th St., Bronx, 12000008

Erie County

Allentown Historic District (Boundary Increase), Portions of Delaware, Elmwood, S. Elmwood, Linwood, Normal, Plymouth, Porter, & Richmond Aves., Franklin, & Hudson Sts., Buffalo, 12000009

Huyler Building, The, 374 Delaware Ave., Buffalo, 12000010

Robertson—Cataract Electric Building, 100, 126 S. Elmwood, Buffalo, 12000011

Tishman Building, 447 Main St., 10 Lafayette Sq., Buffalo, 12000012

Herkimer County

Little Falls Historic District, Roughly bounded by W. Monroe, W. Gansevoort, Prospect, Garden, E. Main, N. William, & Looms St., Little Falls, 12000013

Monroe County

Central Trust Bank Building, 44 Exchange Rd., Rochester, 12000014

SOUTH CAROLINA

Pickens County

Williams—Ligon House, 1866 Farrs Bridge Rd., Easley, 12000015

Spartanburg County

Fowler, William Dixon, House, 5885 SC 215, Pauline, 12000016

VIRGINIA

Amherst County

Macedonia Methodist Church, 1408 Coffeytown Rd., Vesuvius, 12000017

Bland County

Updyke, Junius Marcellus, Farm, 4859 E. Bluegrass Trail, Bland, 12000018

Lynchburg Independent city

Fifth Street Historic District, 5th, 6th, Court, Clay, Madison, Harrison, Federal, Jackson, Polk, & Monroe Sts., Lynchburg (Independent City), 12000019

Prince George County

Church of the Sacred Heart Parish, 9300 Community Ln., Petersburg, 12000020

WISCONSIN

Clark County

Wisconsin Pavilion, 1201 E. Division St., Neillsville, 12000021

[FR Doc. 2012–1151 Filed 1–20–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–480 (Final) and 731–TA–1188 (Final)]

High Pressure Steel Cylinders From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–480 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1188 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of high pressure steel cylinders, provided for in subheading 7311.00.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as Seamless steel cylinders designed for storage or transport of compressed or liquefied gas (''high pressure steel cylinders''). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (''DOT'') approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT–E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the investigation have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings. Excluded from the scope of the investigation are high pressure steel cylinders manufactured to UN–ISO–9809–1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the investigation are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202) 205–3176, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of high pressure steel cylinders, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on May 11, 2011, by Norris Cylinder Company, Longview, Texas.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 17, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 1, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 25, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 27, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the

Commission's rules; the deadline for filing is April 24, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 8, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 8, 2012. On May 23, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 25, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 17, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–1162 Filed 1–20–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0025]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Federal Coal Lease Request

ACTION: 60-Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Antitrust Division (ATR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially regarding the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Ptacek, Antitrust Division, United States Department of Justice, 450 5th Street NW., Suite 8000, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Coal Lease Reserves.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: ATR–139 and ATR–140, Antitrust Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for Profit. Other: None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's existing coal reserves. The Department uses this information to determine whether the issuance, transfer or exchange of the federal coal lease is consistent with the antitrust laws.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. It is estimated that 20 respondents will complete each form, with each response taking approximately two hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40 annual burden hours associated with this collection, in total.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–1154 Filed 1–20–12; 8:45 am]

BILLING CODE 4410–11–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 January 11, 2012, a proposed Consent Decree (''Decree'') in *United States* v. *Merriam*

Manufacturing Company, Inc.; Aztec Industries, L.L.C.; and Estate of Allen Adams, Civil Action No. 3:12-cv-00054, was lodged with the United States District Court for the District of Connecticut.

The Decree resolves claims of the United States pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607, against the parties in connection with the Durham Meadows Superfund Site located in Durham, Connecticut (''Site''). Under the Decree the settling defendants agree to a stipulated judgment in the amount of $20,137,000. The Consent Decree provides that the judgment may be satisfied solely through proceeds from insurance and from the proceeds of the sale of real property.

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* v. *Merriam Manufacturing Company, Inc., et al.,* Civil Action No. 3:12-cv-00054, D.J. Ref. 90–11–3–1721/2.

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 $15.50 (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 $6.50.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–1240 Filed 1–20–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0003]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Report of Multiple Sale or Other Disposition of Pistols and Revolvers

ACTION: 30-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 223, page 71601 on November, 18th, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 22, 2012. This process is conducted in accordance with 5 CFR 1320.10. Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Gary Taylor at (202) 648–7257 or the DOJ Desk Officer at (202) 514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are 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.

Summary of Collection

(1) *Type of Information Collection:* Revision.

(2) *Title of the Form/Collection:* Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Federal Government, State, Local, or Tribal Government. *Abstract:* The form has been changed to allow for multiple disposition dates. Also, input fields have changed to more accurately reflect the information that is required.

Need for Collection

The information documents certain sales or other dispositions of handguns for law enforcement purposes and determines if the buyer is involved in an unlawful activity, or is a person prohibited by law from obtaining firearms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 67,833 respondents will complete a 15 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 49,606 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–1152 Filed 1–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0024]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Report of Firearms Transactions

ACTION: 30-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 220, page 70755, on Tuesday, November 15, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 22, 2012. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are 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.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Firearms Transactions.

(3) *Form Number:* ATF F 5300.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None.

Need for Collection

The information collection documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations, and establishes the person(s) involved in the transactions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 790 respondents will complete a 1 hour form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 790 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–1153 Filed 1–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for the H–1B Technical Skills Training (H–1B) and the H–1B Jobs and Innovation Accelerator Challenge (JIAC) Grant Programs, New Collection

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about H–1B Technical Skills Training (H–1B) [SGA/DFA PY–10–13] and H–1B Jobs and Innovation Accelerator Challenge (JIAC) [SGA/DFA PY–10–15] grant programs. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 23, 2012.

ADDRESSES: Submit written comments to Employment and Training Administration, 200 Constitution Avenue NW., Room C–4518, Washington, DC 20210, Attention: Sarah Sunderlin. Telephone number: (202) 693–3949 (this is not a toll-free number). Fax: (202) 693–3890. Email: *dsi@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for both H–1B grant programs, grantees agree to submit participant-level data and quarterly aggregate reports for individuals who receive services through H–1B programs and their partnerships with business-related nonprofit organizations, education and training providers, including community colleges and other community-based organizations, entities involved in administering the workforce investment system established under Title I of WIA, and economic development agencies, among others. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received employment and training services, placement services, and other services essential to

successful unsubsidized employment through H–1B programs.

This document requests approval for a new information collection to meet the (1) reporting, (2) recordkeeping and (3) program evaluation requirements of both H–1B grant programs through an ETA-provided, Web-based Management Information System (MIS).

Three outcome measures will be used to measure success in the H–1B grants: Entered employment rate, employment retention rate (this includes incumbent workers who retain their positions or advance into new positions and get wage gains after the program), and the average six-month post-program earnings. All of these conform to the common performance measures implemented across Federal job training programs as of July 1, 2005. By standardizing the reporting and performance requirements of different programs, the common measures give ETA the ability to compare across programs the core goals of the workforce system—how many people entered jobs; how many stay employed; and how many successfully completed an educational or vocational training program. In addition to the three outcome measures, grantees will report on a number of leading indicators that serve as predictors of success. These include placement into unsubsidized jobs, attainment of degrees or certificates, placement into post-secondary education or vocational training, on-the-job training (OJT), classroom occupational training, contextualized learning, distance learning, and customized training, including incumbent worker training, and placement into high-growth industries and occupations.

Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA also collects data from H–1B grantees on program activities, participants, and outcomes that are necessary for effective program management and conveying full and accurate information on the performance of H–1B programs to policymakers and stakeholders.

This information collection maintains a reporting and recordkeeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold H–1B grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

The information collection for program evaluation includes setting up a Participant Tracking System (PTS) through the MIS with baseline information similar to the quarterly reports but at the individual participant level. The baseline data covered by this clearance will enable the evaluation to describe the characteristics of study participants at the time they are randomly assigned to a treatment or control group, ensure that random assignment was conducted properly, create subgroups for the analysis, provide contact information to locate individuals for follow-up surveys, and improve the precision of the impact estimates. Such data will be collected on the basis that the evaluation will consist of an experimental design employing random assignment of participants into treatment and control groups. A Web-based PTS will execute the random assignment procedures and compile baseline data on study sample members. This PTS will assure that participant data will be in a consistent format across sites.

A rigorous program evaluation also requires clear and specific documentation of the services provided to treatment group members in each of the grantee sites and the services available to control group members. This qualitative information will enable the evaluation to describe the program design and operations in each site, interpret the impact analysis results, and identify lessons learned for purposes of program replication. The process study site visits will include semi-structured interviews and focus group discussions with various program stakeholders.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New collection.

Title: H–1B Technical Skills Training and H–1B Jobs and Innovation Accelerator Challenge grant programs.

OMB Number: OMB Control Number 1205–0NEW.

ESTIMATED TOTAL BURDEN HOURS

Form/activity	Estimated total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours	Hourly rate for data entry person ($)	Total annual burden cost ($)
Participant Data Collection (including baseline data for evaluation).	85 Grantees, 12,000 participants.	Continual	12,000	2.66	31,920	14.37	458,690.4
Quarterly Narrative Progress Report.	85 Grantees, 12,000 participants.	Quarterly	340	10	3400	14.37	48,858
Quarterly Performance Report.	85 Grantees, 12,000 participants.	Quarterly	340	10	3400	14.37	48,858
Site Visit Data Collection.	150 total staff	Twice	300	1 hour	300	18.76	5,628

ESTIMATED TOTAL BURDEN HOURS—Continued

Form/activity	Estimated total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours	Hourly rate for data entry person ($)	Total annual burden cost ($)
Totals	.....	.....	12,980	23.66	39,020	.....	562,034.4

Affected Public: H–1B Grantees and program participants.

Form(s): Total Annual Respondents: 85 grantees.

Annual Frequency: Quarterly.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 17th day of January 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–1226 Filed 1–20–12; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Condition Application for H–1B, H–1B1, and E–3 Non-Immigrants

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Labor Condition Application for H–1B, H–1B1, and E–3 Non-immigrants,'' (Form ETA–9035 and ETA–9035E) to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before February 22, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is required by Immigration and Nationality Act (INA) sections 212(n) and (t) and 214(c). *See* 8 U.S.C. 1182(n) and (t) and 1184(c). The DOL and Department of Homeland Security have promulgated regulations to implement the INA. Specifically for this collection, 20 CFR 655 Subparts H and I and 8 CFR 214.2(h)(4) are applicable. The INA mandates that no alien may enter the U.S. for the purpose of performing professional work on a temporary basis unless the U.S. employer has attested to the Secretary of Labor that the working conditions for the alien will not adversely affect the working conditions of similarly employed U.S. workers; that the salary will be at least the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, whichever is higher; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that the employer has met all other requirements of the program as specified in the regulations.

The information collection instruments are used by employers seeking to use non-immigrants (H–1B, H–1B1, E–3) in specialty occupations and as fashion models or by interested parties who want to report violations. The information permits the DOL to meet its statutory responsibilities for program administration, management, and oversight.

The DOL has identified this ICR as a revision because of two minor changes. Specifically, this submission includes an acknowledgement sheet for Form ETA 9035 and ETA–9035E and removes appendix materials that are now obsolete. These changes have not altered the burden estimates.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0310. The current OMB approval is scheduled to expire on January 31, 2012; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on October 17, 2011 (76 FR 64109).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0310. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Labor Condition Application for H–1B, H–1B1, and E–3 Non-immigrants.

OMB Control Number: 1205–0310.

Form Numbers: ETA–9035 and ETA–9035E.

Affected Public: Individuals or Households; Private Sector—Business or other for-profits and not-for-profit entities; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 77,425.

Total Estimated Number of Responses: 340,425.

Total Estimated Annual Burden Hours: 310,005.

Total Estimated Annual Other Costs Burden: $0.

Dated: January 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–1227 Filed 1–20–12; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection of the Tax Performance System Handbook ETA 407; Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the Tax Performance System (TPS). A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the address below on or before March 23, 2012.

ADDRESSES: Send comments to Eve MacDonald, Office of Unemployment Insurance, Employment and Training Administration, U.S. Department of Labor, Room S 4522, 200 Constitution Ave. NW., Washington, DC 20210; (202) 693–3028 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, states have been required by regulation at 20 CFR part 602 to operate a program to assess their Unemployment Insurance (UI) tax and benefit programs. TPS is designed to assess the major internal UI tax functions by utilizing several methodologies: Computed Measures, which are indicators of timeliness and completeness based on data automatically generated via the existing ETA 581, Contribution Operations Report (Office of Management and Budget (OMB) approval number 1205–0178, expiring 01/31/2012, and currently under review for extension at OMB); and Program Reviews which assess accuracy through a two-fold examination. This examination involves: (a) ''Systems Reviews'' which examine tax systems for the existence of internal controls; and (b) extraction of small samples of those systems' transactions which are then examined to verify the effectiveness of controls.

II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of TPS Handbook 407. Comments are requested to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Actions

It is important that approval of the TPS Handbook 407 be extended because this report is the only vehicle for collection of information on the quality and timeliness of state UI tax operations. If TPS Handbook 407 data were not collected, there would be no basis for determining and measuring state UI tax performance and effectiveness.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Tax Performance System Handbook 407.

OMB Number: 1205–0332.

Agency Number: ETA Handbook 407.

Recordkeeping: Respondent is expected to maintain data which support the reported data for three years.

Affected Public: State government.

Total Respondents: 52.

Frequency: Annually.

Total Responses: 52.

Average time per response: 1739 hours.

Estimated Total Burden Hours: 90,428.

Total Burden Cost (operating/maintaining): $4,543,637.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the extension of the information collection request; they will also become a matter of public record.

Dated: January 18, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–1224 Filed 1–20–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, January 26, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

Matters To Be Considered

1. Final Rule—Part 741 of NCUA's Rules and Regulations, Interest Rate Risk Policy and Program.
2. Proposed Rule—Part 741 of NCUA's Rules and Regulations, Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans.
3. Advance Notice of Proposed Rulemaking, Part 703 of NCUA's Rules and Regulations, Derivatives.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, January 26, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matters To Be Considered

1. Merger Request Pursuant to Part 708b of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
2. Consideration of Supervisory Activity. Closed pursuant to some or all of the following: exemptions (8), (9)(i)(B) and 9(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: (703) 518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2012–1382 Filed 1–19–12; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0004]

Receipt of Request for Action

Notice is hereby given that by petition dated July 27, 2011, the Natural Resources Defense Council (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) order licensees to comply with 12 specific recommendations in the NRC Near-Term Task Force (NTTF) Report, ''Recommendations for Enhancing Reactor Safety in the 21st Century,'' of July 12, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111861807). As the basis for this request, the petitioner cites the NTTF Report as the rationale and basis of the petition.

The request is being treated pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner declined an opportunity to address the NRR Petition Review Board (PRB). After meeting internally, the PRB's decision was to accept the petition for review. Additionally, the PRB noted that the topic of the petition is undergoing NRC review as part of the lessons-learned from the Fukushima event. The PRB intends to use the Fukushima review to inform its final decision on whether to implement the requested actions.

A copy of the petition (ADAMS Accession No. ML11216A085) is available for inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20874. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–(800) 397–4209 or (301) 415–4737, or by email to *PDR.Resource@nrc.gov.*

Dated December 28, 2011, at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Deputy Director for Reactor Safety Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–1213 Filed 1–20–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–14; Order No. 1138]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional Global Reseller Expedited Package contract. This document invites public comments on the request and addresses several related procedural steps.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On January 12, 2012, the Postal Service filed a notice announcing that it has entered into an additional Global Reseller Expedited Package (GREP) contract.[1] The Postal Service believes the instant contract is functionally equivalent to the GREP baseline agreement and is supported by Governors' Decision No. 10–1 attached to the Notice and originally filed in Docket No. CP2010–36. *Id.* at 2–3, Attachment 3. The Notice explains that Order No. 445, which established GREP Contracts 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1–2. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–36 serve as the baseline contract for future functional equivalence analyses of the GREP Contracts 1 product.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contract is in accordance with Order No. 445. The instant contract is a renewal of the GREP contract, filed in Docket No. CP2011–65, which is scheduled to expire on January 21, 2012. *Id.* at 1. The Postal Service will notify the mailer of the effective date

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, January 12, 2012 (Notice).

within 30 days after all necessary regulatory approvals have been received. The contract will remain in effect until June 30, 2014. *Id.* Attachment 1 at 5. It may, however, be terminated by either party on not less than 30 days' written notice. *Id.*

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract and applicable annexes;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 10–1, which establishes prices and classifications for GREP contracts, a description of applicable GREP contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the instant GREP contract fits within the Mail Classification Schedule language for GREP Contracts 1. The Postal Service identifies general contract terms that distinguish the instant contract from the baseline GREP agreement. It states that the instant contract differs from the contract in Docket No. CP2010–36 pertaining to revisions or clarification of terms, *e.g.,* definition of qualifying mail, discounts offered by the reseller, minimum revenue, periodic review of minimum commitment, term, assignment, number of rate groups, and solicitation of reseller's customers. *Id.* at 4–6. The Postal Service states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contract's functional equivalency. *Id.* at 4. The Postal Service asserts that ''[b]ecause the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this GREP contract are similar, if not the same, as the relevant characteristics of the contract filed in Docket No. CP2010–36.'' *Id.* at 4–5.

The Postal Service concludes that its filing demonstrates that the new GREP contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GREP contract. It states that the differences do not affect the services being offered or the fundamental structure of the contract. Therefore, it requests that the instant contract be included within the GREP Contracts 1 product. *Id.* at 5–6.

II. Notice of Filing

The Commission establishes Docket No. CP2012–14 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than January 23, 2012. The public portions of this filing can be accessed via the Commission's Web site, *http://www.prc.gov.*

The Commission appoints James F. Callow to serve as Public Representative in the captioned proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–14 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than January 23, 2012.

3. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–1218 Filed 1–20–12; 8:45 am]

BILLING CODE ;P

POSTAL REGULATORY COMMISSION

Sunshine Act; Notice of Meeting

TIME AND DATE: Wednesday, February 1, 2012, at 11 a.m.

PLACE: Commission Hearing Room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open session will be audiocast. The audiocast may be accessed via the Commission's Web site at *http://www.prc.gov.*

MATTERS TO BE CONSIDERED: The agenda for the Commission's February 2012 meeting includes the items identified below.

Portions Open to the Public

1. Report on legislative activities.
2. Report on public participation.
3. Report on international activities.
4. Report on post office appeals.
5. Report on other pending dockets.
6. Report on the activities of the Office of the Secretary.

Chairman's Public Comment Period

Portion Closed to the Public

7. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at (202) 789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at (202) 789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

By the Commission.

Dated: January 19, 2012.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–1396 Filed 1–19–12; 4:15 pm]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of information collection:* Application for Benefits Due but Unpaid at Death; OMB 3220–0055.

Under Section 2(g) of the Railroad Unemployment Insurance Act (RUIA),

benefits that accrued but were not paid because of the death of the employee shall be paid to the same individual(s) to whom benefits are payable under Section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. One response is requested of each respondent. Completion is required to obtain a benefit.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 63960 on October 14, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Benefits Due but Unpaid at Death.

OMB Control Number: 3220–0055.

Form submitted: UI–63.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The collection obtains the information needed by the Railroad Retirement Board to pay benefits accrued under section 2(g) of the Railroad Unemployment Insurance Act, but not paid because of the death of the employee.

Changes proposed: The RRB proposes no changes to Form UI–63.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–63	25	7	3

2. *Title and Purpose of information collection:* Medicare; OMB 3220–0082.

Under Section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB uses Form AA–6, Employee Application for Medicare; Form AA–7, Spouse/Divorced Spouse Application for Medicare; and Form AA–8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act.

Further, in order to determine if a qualified railroad retirement beneficiary who is claiming supplementary medical insurance coverage under Medicare is entitled to a Special Enrollment Period (SEP) and/or premium surcharge relief because of coverage under an Employer Group Health Plan (EGHP), the RRB needs to obtain information regarding the claimant's EGHP coverage, if any. The RRB uses Form RL–311–F, Evidence of Coverage Under An Employer Group Health Plan, to obtain the basic information needed by the RRB to establish EGHP coverage for a qualified railroad retirement beneficiary. Completion of the forms is required to obtain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 63960 on October 14, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Medicare.

OMB Control Number: 3220–0082.

Forms submitted: AA–6, AA–7, AA–8, RL–311–F.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households; Business-or-other for profit.

Abstract: The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The forms in the collection obtain both information needed to enroll non-retired employees and survivor applicants in the plan and information from railroad employers needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical coverage under Medicare.

Changes proposed: The RRB proposes no changes to Forms AA–6, AA–7, AA–8 or RL–311–F.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–6	180	8	24
AA–7	50	8	7
AA–8	10	8	1
RL–311–F	800	10	133
Total	1,040	.....	165

3. *Title and Purpose of information collection:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220–0107.

Under Section 2 of the Railroad Retirement Act (RRA), a railroad employee's retirement annuity or an annuity paid to the spouse of a railroad employee is subject to work deductions in the Tier II component of the annuity and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). The LPE is defined as the last person, company, or institution, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse, or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(f)(1) of the RRA for earnings from any non-railroad employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work and LPE

are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL–231–F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed to determine if a work deduction should be applied because an annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 65219 on October 20, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.

OMB Control Number: 3220–0107.

Forms submitted: RL–231–F.

Type of request: Extension without change of a currently approved collection.

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Under the Railroad Retirement Act (RRA), benefits are not payable if an annuitant works for an employer covered under the RRA or last non-railroad employer. The collection obtains information regarding an annuitant's work and earnings from a non-railroad employer. The information is used for determining whether benefits should be withheld.

Changes proposed: The RRB proposes no changes to Form RL–231–F.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
RL–231–F	300	30	150

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312) 751–3363 or (*Charles.Mierzwa@RRB.GOV*).

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: (202) 395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2012–1186 Filed 1–20–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17Ac2–2 and Form TA–2, SEC File No. 270–298, OMB Control No. 3235–0337.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ac2–2 (17 CFR 240.17Ac2–2) and Form TA–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Rule 17Ac2–2 and Form TA–2 require transfer agents to file an annual report of their business activities with the Commission.

These reporting requirements are designed to ensure that all registered transfer agents are providing the Commission with sufficient information on an annual basis about the transfer agent community and for the Commission to effectively monitor business activities of transfer agents.

The amount of time needed to comply with the requirements of amended Rule 17Ac2–2 and Form TA–2 varies. From the total 473 registered transfer agents, approximately 30 registrants would be required to complete only Questions 1 through 4 and the signature section of amended Form TA–2, which the Commission estimates would take each registrant about 30 minutes, for a total burden of 15 hours (30 × .5 hours). Approximately 111 registrants would be required to answer Questions 1 through 5, 10, and 11 and the signature section, which the Commission estimates would take about 1 hour and 30 minutes, for a total of 166.5 hours (111 × 1.5 hours). The remaining registrants, approximately 332, would be required to complete the entire Form TA–2, which the Commission estimates would take about 6 hours, for a total of 1,992 hours (332 × 6 hours). The aggregate annual burden on all 473 transfer agents registered with the Commission as of January 1, 2012, is thus approximately 2,174 hours (15 hours + 166.5 hours + 1,992 hours).

We estimate that the total cost of reviewing and entering the information reported on the Forms TA–2 for respondents is $41.50 per hour. The Commission estimates that the total internal labor cost of complying with the rule and form requirements would be $90,221 annually ($41.50 × 2,174). This, however, is solely a monetization of the hour burden and is not a separate cost burden.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 17, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1167 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29922; 812–13804]

Main Street Capital Corporation, et al.; Notice of Application

January 17, 2012.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order pursuant to section 57(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 57(a)(1) of the Act.

APPLICANTS: Main Street Capital Corporation (the ''Company''), Haley Ventures, LLC, HHMS Investments, LLC, Reppert Investments LP, Joseph E. Canon, Arthur L. French, Vincent D. Foster, and Todd A. Reppert (collectively, the ''Applicants'').

SUMMARY: *Summary of Application:* The order would permit the Company to purchase equity interests in Main Street Capital II, LP (''MSC'') from certain persons who are affiliated with the Company.

DATES: *Filing Dates:* The application was filed on July 23, 2010 and amended on December 7, 2010 and October 24, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 13, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 1300 Post Oak Boulevard, Suite 800, Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6388 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company is an internally-managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company operates as a principal investment firm that primarily provides long-term debt and equity capital to lower middle market companies. The Company's common stock trades on the New York Stock Exchange.

2. Haley Ventures, LLC is owned and controlled by Travis Haley, an employee of the Company. Haley Ventures, LLC currently owns less than 0.2% of the partnership interests in MSC.

HHMS Investments, LLC is owned and controlled by Dwayne L. Hyzak, Curtis L. Hartman, David L. Magdol, and Rodger A. Stout, each of whom is a senior officer of the Company. HHMS Investments, LLC currently owns less than 1% of the partnership interests in MSC.

Reppert Investments LP is a partnership that is controlled by Todd Reppert and his spouse. Reppert Investments LP currently owns less than 0.5% of the partnership interests in MSC.

Mr. Foster is the chairman of the Company's seven-member board of directors (the ''Board'') and the chief executive officer of the Company. Mr. Reppert is the president and chief financial officer of the Company. Both individuals also serve on the investment committee and the credit committee of the Company. Mr. Foster currently owns approximately 3% of the partnership interests in MSC. Mr. Reppert currently owns less than 0.5% of the partnership interests in MSC.

Mr. Canon and Mr. French serve as two of the five directors of the Company who are not ''interested persons'' of the Company within the meaning of section 2(a)(19) (the ''Independent Directors''). Each of Mr. Canon and Mr. French currently owns less than 0.5% of the partnership interests in MSC.

3. MSC is a limited partnership that has received a license from the United States Small Business Administration (''SBA'') to operate as a Small Business Investment Company (''SBIC''). MSC relies on section 3(c)(1) for an exclusion from the definition of ''investment company'' under the Act.

4. The Company owns, directly or indirectly, all of the equity interests in Main Street Mezzanine Fund, LP (''MSMF''), which is licensed as an SBIC by the SBA. Both MSMF and MSC have the same investment objective and strategies as the Company, and both are advised by Main Street Capital Partners, LLC (the ''Investment Adviser''). Pursuant to exemptive relief described in the application,[2] both generally invest in the same companies at the same time and on the same terms.

5. On January 7, 2010, the Company consummated transactions to exchange 1,239,695 shares of its common stock for approximately 87.7% of the total dollar value of the partnership interests in MSC (the ''Exchange Offer''). In connection with the Exchange Offer, individuals that comprise the management of the Company transferred 100% of the membership interests in the general partner of MSC, Main Street Capital II GP, LLC (''MSC II GP''), to the Company for no consideration. MSC II GP owns 0.4% of the total dollar value of the partnership interests in MSC as its general partner. Since the Exchange Offer, the Company has purchased an additional 0.5% of the total dollar value of partnership interests in MSC from individual owners who are not affiliated with the Company in exchange for shares of the Company's common stock based on the same formula used in the Exchange Offer, as adjusted for cash capital contributed by the Company in connection with the Exchange Offer (the ''Post Exchange Offer Non-Affiliate Purchases'').[3]

6. Accordingly, the Company owns a total of 88.6% of the total dollar value of the partnership interests in MSC. Fifteen individuals and entities own the remaining 11.4% of the total dollar value of the partnership interests. Of those interests, 6.4% are held by persons not affiliated with the Company (the ''Non-Affiliated Limited Partners''), while 5.0% are held by certain individuals who comprise the management of the Company or are

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Main Street Capital Corporation, *et al.,* Investment Company Act Release Nos. 28265 (May 5, 2008) (notice) and 28295 (June 3, 2008) (order).

[3] At the time of the Exchange Offer, the SBA required the Company to fully fund any committed capital contributions tied to those limited partnership interests that it acquired. As a result, the Company contributed $24,250,000 to MSC at the time of the Exchange Offer (the ''MSCC Capital Contributed Post Exchange Offer'').

Independent Directors of the Company or by entities controlled by individuals who comprise the management of the Company or are employees of the Company (the ''Affiliated Limited Partners'' and together with the Non-Affiliated Limited Partners, the ''Limited Partners'').

7. Subsequent to the Exchange Offer, the Board, including the required majority (within the meaning of section 57(o)) (the ''Required Majority''), authorized the management of the Company to acquire the interests in MSC that had not been acquired during the Exchange Offer. Accordingly, the Company desires to purchase the Affiliated Limited Partners' interests in MSC (the ''Purchases'' and each, a ''Purchase'') in exchange for newly issued shares of the Company's common stock (the ''Shares'').[4] Applicants request the order to the extent necessary to permit the Company to make the Purchases.

8. In connection with the Exchange Offer, the interests of the selling limited partners of MSC were valued at a 30% premium to the net asset value (''NAV'') per interest of MSC (the ''Exchange Offer Valuation Formula''). The Exchange Offer Valuation Formula was approved by the Board, including the Required Majority, after consultation with an independent financial adviser retained by the Board. The Board approved the Exchange Offer Valuation Formula as being fair and reasonable to the shareholders of the Company based on a number of factors, including the perceived value of the long-term, low-cost SBIC debt that MSC has incurred and the perceived value of the SBIC license held by MSC. The Company believes that, in order to ensure that the Affiliated Limited Partners are not treated any differently from those former limited partners who participated in the Exchange Offer, none of which were affiliated with the Company, the same Exchange Offer Valuation Formula should be used to value the Affiliated Limited Partners' interests in MSC. However, because of additional capital that has been, or may be, contributed to MSC after the Exchange Offer, some adjustments to the Exchange Offer Valuation Formula will be necessary to determine the value of each Affiliated Limited Partner's interest in MSC (the Exchange Offer Valuation Formula as so adjusted, the ''Adjusted Value'').[5] The aggregate number of Shares issued to each Affiliated Limited Partner in connection with the Purchases will be determined by dividing the Adjusted Value of that Affiliated Limited Partner's interest in MSC by the greater of the market price per share[6] or the NAV per share of the Company's common stock at the time of the Purchase. In addition, in connection with the Purchases, each Affiliated Limited Partner will receive one dollar for each dollar value of any cash contributed to MSC by that Affiliated Limited Partner after the Exchange Offer.

Applicants' Legal Analysis

1. Section 57(a) of the Act provides that it is unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to sell any security or other property to the BDC or to any company controlled by the BDC except securities of which the buyer is the issuer or of which the seller is the issuer and which are part of a general offering to holders of a class of its securities. Section 57(b) provides that section 57(a) applies to any director, officer, or employee of a BDC or any person who is an affiliated person of any such person within the meaning of section 2(a)(3)(C) of the Act. Section 2(a)(3)(C) defines an ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Section 2(a)(9) of the Act provides that any person owning more than 25% of the outstanding voting securities of a company is presumed to control the company.

2. As noted above, certain of the Affiliated Limited Partners are either officers or directors of the Company. Additionally, certain of the Affiliated Limited Partners are companies that would, pursuant to the definition in section 2(a)(9), be considered to be controlled by the officers or employees of the Company. Thus, section 57 would prohibit the Affiliated Limited Partners from entering into the Purchases with the Company.

3. Section 57(c) of the Act provides that the Commission may exempt a proposed transaction from section 57(a) if evidence establishes that (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable, fair, and do not involve overreaching of the BDC or its shareholders on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of the BDC, as recited in its filings with the Commission, its registration statement, and its reports to shareholders; and (iii) the proposed transaction is consistent with the general purposes of the Act.

4. The Company represents that the acquisition of interests in MSC owned by the Affiliated Limited Partners serves a valid business purpose. The Company believes that its ownership of MSC is important for the stable capitalization and strategic growth of the Company. The Company also believes that a simplified ownership structure for MSC will be less confusing for the shareholders of the Company to understand and will make its financial statements more clear. In addition, the Company believes that the Purchases would be beneficial to shareholders of the Company in so far as they would eliminate any perceived conflicts of interest that may occur when the Investment Adviser allocates investment opportunities among the Company, MSMF, and MSC, given that MSC is now partially owned by affiliates of the Company. Applicants represent that the Purchases will not be made unless approved by the Board, including the Required Majority, and also, separately, by all of the Independent Directors who are not Limited Partners. Applicants also represent that the terms and the pricing of the Purchases will be reviewed by these parties at the time of each of their approval. Additionally, applicants state that the Purchases will not be made unless the Company obtains an opinion from an independent financial adviser stating that the terms of each Purchase are fair, from a financial point of view, to the shareholders of the Company.

5. Applicants represent that the terms of the Purchases are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants note that the Company, MSC, and MSMF share the same investment strategies and criteria. Applicants also note that the portfolio companies in which MSC is invested are generally the same portfolio companies in which MSMF and/or the

[4] The Company also intends to continue to pursue additional Post Exchange Offer Non-Affiliate Purchases from the remaining Non-Affiliated Limited Partners.

[5] In order to ensure that the Affiliated Limited Partners do not unfairly benefit from the MSCC Capital Contributed Post Exchange Offer, the amount of that contribution will be excluded from the calculation of the NAV of MSC in calculating the Adjusted Value. Additionally, in order for MSC to continue its operations, a capital call may need to be made on any remaining unfunded limited partner capital before the time that the Purchases can be completed. In order to further ensure that the Affiliated Limited Partners are not being provided with a more favorable offer for their interests in MSC than were those former limited partners who participated in the Exchange Offer, any cash contributed to MSC by the Affiliated Limited Partners after the Exchange Offer will not be multiplied by 130% but, instead, will be exchanged in connection with the Purchase on a dollar for dollar basis.

[6] Market price will be determined by using the 20-day volume weighted average price at the time of the purchase.

Company are invested and these companies are valued in the same way for MSC, the Company, and MSMF. Additionally, applicants assert that, because the Shares issued by the Company in exchange for the additional interests in MSC will be valued at or higher than the applicable NAV per share of the Company at the time of the Purchases, shareholders of the Company will not experience dilution in the NAV per share of the Company's common stock in connection with the Purchases. Furthermore, applicants note that the Company will merely be acquiring additional interests in a company (MSC) in which it already owns a majority interest and will be doing so at a price calculated using the same formula which was used to acquire its current majority interest.

6. For these reasons, applicants represent that the terms of the Purchases meet the standards set forth in section 57(c).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1166 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66164; File No. 4–645]

Comment Request for Study Regarding Financial Literacy Among Investors

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: In connection with a study regarding financial literacy among investors as mandated by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act''), the Securities and Exchange Commission is requesting public comment on the following: methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services; the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of registered open-end investment companies; and methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of registered open-end investment companies.

DATES: Comments should be received on or before March 23, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–645 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 4–645. This file number should be included on the subject line if email is used. To help us 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*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lori J. Schock, Director, (202) 551–6500 or Mary S. Head, Deputy Director, (202) 551–6500, Office of Investor Education and Advocacy, Securities and Exchange Commission, 100 F Street, NE. Washington, DC 20549–2551.

SUPPLEMENTARY INFORMATION: Section 917 of the Dodd-Frank Act requires the Commission to conduct a study regarding financial literacy (the ''Study'') among investors and submit a report on the study to the Senate Committee on Banking, Housing, and Urban Affairs and the House of Representatives Committee on Financial Services no later than two years after enactment of the Dodd-Frank Act, that is, by July 21, 2012.

The provisions of Section 917(a) of the Dodd-Frank Act require that the Study include a number of specific components. In particular, Sections 917(a)(2)–(4) of the Dodd-Frank Act require that the Study identify:

(i) Methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;

(ii) The most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of registered open-end investment companies (''mutual funds''); and

(iii) Methods to increase the transparency of expenses and conflicts of interest in transactions involving investment services and products, including shares of mutual funds.

As part of its study of the issues raised in Sections 917(a)(2)–(4) of the Dodd-Frank Act, the Commission's Office of Investor Education and Advocacy is conducting investor testing using qualitative and quantitative public opinion research methods. In addition, the Commission is soliciting public comment on each of the issues identified in Sections 917(a)(2)–(4) of the Dodd-Frank Act.[1] All interested parties are invited to submit their views on one or more of these issues. Comments will be of greatest assistance if accompanied by supporting data and analysis.

By the Commission.

Dated: January 17, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–1137 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 26, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

[1] In April 2011, pursuant to Section 917(a)(5) of the Dodd-Frank Act, the Commission formally solicited public comment regarding the most effective existing private and public efforts to educate investors and has received more than 80 public comments. *See* Securities Exchange Act Release No. 64306 (April 19, 2011), [76 FR 22740 (April 22, 2011)]. The public comments are available at *http://www.sec.gov/comments/4-626/4-626.shtml.*

will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 26, 2012 will be:

Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings; Other matters relating to enforcement proceedings; and An adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 19, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–1408 Filed 1–19–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66169; File No. SR–ISE–2012–01]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates

January 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 3, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to (i) amend the threshold levels and rebate amounts for Qualified Contingent Cross (''QCC'') orders and Solicitation orders, (ii) lower the service fee for QCC orders in the Exchange's fee cap program, and (iii) increase the ''take'' fee for certain customer orders that remove liquidity in a select group of options classes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to (i) amend the threshold levels and rebate amounts for QCC and Solicitation orders, and (ii) lower the service fee for QCC orders in the Exchange's fee cap program, both of which are designed to encourage Members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.[3] Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation traded contracts for that month. The rebate is paid to the Member entering a qualifying order, *i.e.,* a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating contract sides	Rebate per contract
0–199,999	$0.00
200,000–999,999	0.02
1,000,000–1,699,999	0.03
1,700,000–1,999,999	0.04
2,000,000+	0.05

The Exchange now proposes to amend the current tiers by: (1) Increasing the rebate amount for the second tier (200,000–999,999 contracts) from $0.02 per contract to $0.05 per contract; (2) adjusting the third tier (1,000,000–1,699,999 contracts) so that it becomes 1,000,000–1,599,999 contracts and increasing the rebate amount for the adjusted third tier from $0.03 per contract to $0.08 per contract; (3) eliminating the fourth tier (1,700,000–1,999,999 contracts), in its entirety; and (4) adjusting the last tier (2,000,000+ contracts) so that it becomes 1,600,000+ contracts and increasing the rebate amount for the adjusted last tier from $0.05 per contract to $0.10 per contract. With the proposed changes to the tiers, the Exchange is attempting to strike the right balance between the number of qualifying contracts and its corresponding rebate to ensure that the incentive program achieves its intended purpose of attracting greater order flow from its Members. The proposed changes to this tier-based rebate program is also a competitive response to recent changes proposed by a competitor exchange to rebates it offers for QCC transactions executed on that exchange.[4]

With the proposed amended tiers, the volume threshold and corresponding rebate per contract will be as follows:

Originating contract sides	Rebate per contract
0–199,999	$0.00
200,000–999,999	0.05

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68); 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR–ISE–2011–70); and 65898 (December 6, 2011), 76 FR 77279 (December 12, 2011) (SR–ISE–2011–78).

[4] *See* Options Trader Alert #2011—72 NASDAQ OMX PHLX, Inc. (''PHLX'') and Nasdaq Options Market (''NOM'') Update Pricing Effective January 3, 2012.

Originating contract sides	Rebate per contract
1,000,000–1,599,999	0.08
1,600,000+	0.10

Further, the Exchange currently has a monthly fee cap program for Member firms on all proprietary trading, with certain exclusions, in all products traded on the Exchange.[5] Pursuant to the fee cap program, a service fee of $0.01 per side applies to all transactions that are eligible for the fee cap. For QCC orders, the service fee is $0.05 per side. The service fee applies once a Member reaches the fee cap level and applies to every contract side included in and above the fee cap. A Member who does not reach the monthly fee cap is not charged the service fee. Once the fee cap is reached, the service fee applies to both Firm Proprietary and other account designations in all ISE products in addition to those transactions that were included in reaching the monthly fee cap. The service fee is not calculated in reaching the fee cap. The Exchange now proposes to lower the service fee for QCC orders from $0.05 per side to $0.01 per side, so that QCC orders are effectively charged the same service fee as all other orders that are assessed a service fee.

Finally, with this proposed rule change, the Exchange also seeks to increase the ''take'' fee for certain customer orders that remove liquidity in a select group of options classes. The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[6] For removing liquidity in the Select Symbols, the Exchange currently charges a ''take'' fee of: (i) $0.12 per contract for Priority Customer[7] regular orders, regardless of size. The Exchange now proposes to increase the ''take'' fee for Priority Customer regular orders, regardless of size, in the Select Symbols from $0.12 per contract to $0.15 per contract.

[5] *See* Exchange Act Release Nos. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR–ISE–2011–13).

[6] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[8] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members. The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which among other things, adjusts the threshold levels for Members to qualify for the highest per contract rebate payable, is reasonable as it will encourage Members who direct their QCC and Solicitation orders to the Exchange to continue to do so instead of sending this order flow to a competing exchange. The Exchange believes that with the proposed amended tiers, more Members are now likely to qualify for higher rebates for sending their QCC and Solicitation orders to the Exchange.

The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders;[10] and tiered pricing that reduces rates for market makers based on the level of business they bring to the Exchange.[11] This proposed rule change targets a particular segment in which the Exchange seeks to garnish greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade a minimum of 200,000 qualifying contracts in QCC and Solicitation orders on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange. The Exchange further believes that its fees and credits remain competitive with fees charged by other exchanges and therefore are reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The QCC and Solicitation rebate program employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers.

The Exchange believes that its proposal to lower the service fee from $0.05 per side to $0.01 per side is equitable and reasonable as it will standardize the service fees charged by the Exchange for orders that are subject to the Exchange's fee cap program. Further, the Exchange believes that its proposal to lower the service fee for QCC orders under the Exchange's fee cap program will generally allow the Exchange to better compete for QCC orders and thus enhance competition.

The Exchange also believes that its proposal to assess a $0.15 per contract ''take'' fee for all Priority Customer regular orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. The proposed fee is substantially lower than the $0.29 per contract fee currently charged by PHLX for Customer orders that remove liquidity in a number of symbols that are subject to that exchange's maker/taker fees.[12] The Exchange notes that PHLX has proposed to increase this fee from $0.29 per contract to $0.31 per contract, effective January 3, 2012.[13] Therefore, while ISE is proposing a fee increase, the resulting fee remains lower than the fee change proposed by PHLX for similar orders. Further, the proposed increase will bring this fee closer to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange also notes, however, that with this proposed rule change, the fee charged to Priority Customer regular orders will remain lower (as it historically has

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] For example, the customer fee is $0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[11] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[12] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[13] *See* Options Trader Alert #2011—71 PHLX and NOM Update Pricing Effective January 3, 2012.

always been) than the fee currently charged by the Exchange to other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–ISE–2012–01 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–ISE–2012–01. 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–ISE–2012–01 and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1175 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66171; File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72]

Self-Regulatory Organizations; EDGA Exchange, Inc.; EDGX Exchange, Inc.; International Securities Exchange, LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in Which Deutsche Börse AG and NYSE Euronext Would Become Subsidiaries of Alpha Beta Netherlands Holding N.V.

January 17, 2012.

I. Introduction

On October 12, 2011, each of EDGA Exchange, Inc (''EDGA''), EDGX Exchange, Inc. (''EDGX''), International Securities Exchange LLC (''ISE''), New York Stock Exchange LLC (''Exchange''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes in which their respective indirect parent owners will become subsidiaries of Alpha Beta Netherlands Holding N.V (''Holdco''). The proposed rule changes were published for comment in the **Federal Register** on October 20, 2011.[4] The Commission received three comment letters, one each on the NYSE, NYSE Amex, and NYSE Arca proposals, from one commenter.[5] The Exchange filed a response to these comments on January 5, 2012.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 65562 (October 14, 2011), 76 FR 65288 (October 20, 2011) (SR–NYSE–2011–51) (''Notice''); 65563 (October 14, 2011), 76 FR 65272 (October 20, 2011) (SR–NYSEAmex–2011–78) (''NYSE Amex Notice''); 65564 (October 14, 2011), 76 FR 65264 (October 20, 2011) (SR–EDGA–2011–34) (''EDGA Notice''); 65565 (October 14, 2011), 76 FR 65255 (October 20, 2011) (SR–EDGX–2011–33) (''EDGX Notice''); 65566 (October 14, 2011), 76 FR 65247 (October 20, 2011) (SR–ISE–2011–69) (''ISE Notice''); 65567 (October 14, 2011), 76 FR 65230 (October 20, 2011) (SR–NYSEArca–2011–72) (''NYSE Arca Notice'').

[5] *See* Letters to Commission, from Andrew Rothlein, dated November 2, 2011 (''Rothlein Letters'').

[6] *See* letter from Janet McGinniss, Senior Vice President, Legal & Corporate Secretary, NYSE, to Elizabeth M. Murphy, Secretary, Commission, dated January 5, 2012 (''NYSE Response to Comments'').

Continued

The Commission has reviewed carefully the proposed rule change, the comment letters, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,[8] 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, and 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. Section 6(b) of the Act[9] also requires that the rules of the exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

II. Discussion

The Exchange, NYSE Amex and NYSE Arca (each a ''NYSE Exchange'') and ISE, EDGA and EDGX (each a ''DB Exchange'' or a ''DB U.S. Regulated Subsidiary'') have submitted their proposed rule changes in connection with the proposed business combination (the ''Combination'') of NYSE Euronext, a Delaware corporation (''NYSE Euronext''), and Deutsche Börse AG, an Aktiengesellschaft organized under the laws of the Federal Republic of Germany (''Deutsche Börse'').

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of the NYSE Exchanges and (2) 100% of the equity interest of NYSE Market, Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C. (''NYSE Arca LLC'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the ''NYSE U.S. Regulated Subsidiaries'' and each, a ''NYSE U.S. Regulated Subsidiary'').

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (''ISE Holdings''), which in turn holds 100% of the equity interest of ISE. ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings LLC (''Direct Edge Holdings''), which in turn indirectly holds 100% of the equity interest of EDGA and EDGX.[10]

As a result of the Combination, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''), would be held under a single, publicly traded holding company organized under the laws of the Netherlands (''Holdco'').[11] The proposed rule changes are necessary to effectuate the consummation of the Combination and will not be operative until the date of the consummation of the Combination (the ''Closing Date''). The proposed rule changes and exhibits thereto contain modifications to the underlying corporate governance documents of the U.S. Regulated Subsidiaries and their respective direct and indirect owners that reflect the current structure of the Combination. The Commission notes that any changes to the structure of the Combination that are made subsequent to the date of this approval order but prior to the Closing Date may be considered additional proposed rule changes required to be filed with and approved by the Commission pursuant to Section 19 of the Act.[12] In addition, the Commission notes that, if the Combination is not consummated, the proposed rule changes will not become effective.

A. Corporate Structure

Following the Combination, Holdco would be a for-profit, publicly traded corporation formed under the laws of the Netherlands and would act as the holding company for the businesses of NYSE Euronext and Deutsche Börse, with NYSE Euronext and Deutsche Börse each being a separate subsidiary of Holdco. Holdco would hold all of the equity interests in NYSE Euronext, which would hold (1) 100% of the equity interest of NYSE Group (which, in turn, would continue to directly or indirectly hold 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal, and the United Kingdom). Holdco would also hold a majority of the equity interests in Deutsche Börse,

On January 9, 2012, the Commission received three rebuttal letters to the NYSE Response to Comments (the ''Rothlein Rebuttal Letters'').

[7] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] *Id.*

[10] Following a corporate transaction in 2007 (the ''2007 Transaction''), ISE Holdings became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings''), which is wholly-owned by Eurex Frankfurt AG (''Eurex Frankfurt,'' and, with Deutsche Börse, the ''German Upstream Owners''). Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG (''Eurex Zürich''), which, in turn, is jointly owned by Deutsche Börse and SIX Swiss Exchange AG (''SWX''), a wholly-owned subsidiary of SIX Group AG (SIX Group AG, SWX, and Eurex Zürich are referred to collectively as the ''Swiss Upstream Owners,'' and the Swiss Upstream Owners and the German Upstream Owners are referred to collectively as the ''non-U.S. Upstream Owners''). As a result of ISE Holdings' purchase of an equity interest in Direct Edge Holdings, the non-U.S. Upstream Owners, U.S. Exchange Holdings (together with the non-U.S. Upstream Owners, the ''Upstream Owners''), and ISE Holdings acquired indirect ownership and voting interests in EDGX and EDGA. *See* Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR–ISE–2008–85) (order relating to ISE Holdings' purchase of an ownership interest in Direct Edge Holdings); *see also,* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101) (order relating to Eurex Frankfurt's acquisition of an indirect interest in ISE Holdings) (''Eurex Order'').

In connection with the 2007 Transaction, each of the non-U.S. Upstream Owners adopted corporate resolutions (collectively, the ''2007 Resolutions'') designed to maintain the independence of the regulatory functions of ISE. *See* Eurex Order. In 2007, the non-U.S. Upstream Owners were Eurex Frankfurt, Deutsche Börse AG, Eurex Zürich, SWX, SWX Group, and Verein SWX Swiss Exchange. The 2007 Resolutions and the corporate governing documents of U.S. Exchange Holdings and ISE Holdings related to ISE and, by their terms, did not apply to additional national securities exchanges, such as EDGX and EDGA, that the Upstream Owners and ISE Holdings might control, directly or indirectly, as a result of a subsequent transaction. To maintain the independence of the regulatory function of EDGX and EDGA, in connection with EDGX's and EDGA's Form 1 Applications, each of the non-U.S. Upstream Owners adopted supplemental resolutions (the ''Supplemental Resolutions'') that apply the 2007 Resolutions to EDGX and EDGA in the same manner and to the same extent as the 2007 Resolutions apply to ISE. Accordingly, the Supplemental Resolutions extend to EDGX and EDGA the commitments that the non-U.S. Upstream Owners made in the 2007 Resolutions with respect to ISE. *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196).

[11] Holdco is currently named ''Alpha Beta Netherlands Holding N.V.,'' but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse. Each of EDGA, EDGX, ISE, NYSE, NYSE Amex and NYSE Arca would amend their respective rules and corporate documents to reflect Holdco's new name.

[12] 15 U.S.C. 78s.

which would indirectly hold 50% of the equity interest of ISE Holdings (which, in turn, would continue to hold (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings would continue to indirectly hold 100% of the equity interest of EDGA and EDGX. Holdco intends to list its ordinary shares on the New York Stock Exchange, the regulated market of the Frankfurt Stock Exchange, and the regulated market segment of Euronext Paris. Holdco and its subsidiaries will have dual headquarters in Frankfurt and New York.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, the Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (Autorité des Marchés Financiers), the French Prudential Supervisory Authority (Autorité de Contrôle Prudentiel), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des Services et Marchés Financiers), the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários—CMVM), and the U.K. Financial Services Authority (FSA).

The NYSE Exchanges and DB Exchanges represent that the Combination will have no effect on the ability of any party to trade securities on the NYSE Exchanges or DB Exchanges. Other than as described herein, the NYSE Exchanges and the DB Exchanges also represent that Holdco will not make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission.

A core aspect of the structure of the Combination is local regulation of the marketplace, members, and issuers. Therefore, securities exchanges, members, and issuers of the U.S. Regulated Subsidiaries will continue to be regulated in the same manner as they are currently regulated. The Commission notes that this conclusion (*i.e.,* that securities exchanges, members, and issuers of the U.S. Regulated Subsidiaries will continue to be regulated in the same manner as they are currently regulated) is based on the structure of the Combination as described in this proposal.

1. Holdco

Following the Combination, Holdco will be a for-profit, publicly traded corporation that will act as a holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold (i) all of the equity interests in NYSE Euronext, which in turn, directly or indirectly holds 100 percent of the equity interests of the NYSE U.S. Regulated Subsidiaries, and (ii) a majority of the equity interests in Deutsche Börse, which indirectly holds interests in ISE, EDGA, and EDGX. Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although Holdco is not an SRO, certain provisions of its proposed Deed of Amendment of Articles of Association (the ''Holdco Articles''), along with other corporate documents, are rules of an exchange [13] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the NYSE Exchanges and DB Exchanges have filed the proposed Holdco Articles, along with other corporate documents, with the Commission.

Voting and Ownership Limitations

The proposed Holdco Articles include restrictions on the ability to vote and own shares of stock of Holdco. Under the proposed Holdco Articles, no person (either alone or together with its related persons) [14] will be entitled to vote or cause the voting of shares of stock of Holdco beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter. No person (either alone or together with its related persons) may acquire the ability to vote more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons not to vote shares of Holdco's outstanding capital stock. Holdco shall disregard any such votes purported to be cast in excess of these limitations.[15]

In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of Holdco representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter, except that a 20% restriction would apply to any person, either alone or with its related person, that is a member of an NYSE Exchange or DB Exchange.[16] In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of Holdco in excess of the 40% threshold, such person and its related persons will be obligated to offer for sale and to transfer that number of shares necessary so that such person shall beneficially own a number of shares entitling the holder thereof to cast votes on any matter which is in the aggregate no more than 40% of the then outstanding votes entitled to be cast on any matter.[17] If such person(s) fails to comply within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco transfer obligation.[18]

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco ownership restriction (any such person(s), a ''Non-Compliant Owner''), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco ownership restriction. Specifically, the Non-Compliant Owner's rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco

[13] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If Holdco decides to change the Holdco Articles, Holdco must submit such change to the board of directors of the U.S. Regulated Subsidiaries, and if any or all of such board of directors shall determine that such amendment must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* proposed Holdco Articles, Section 36.2.

[14] *See* proposed Holdco Articles, Section 34.1 and Section 34.8 for the definition of ''related person.''

[15] *See* proposed Holdco Articles, Section 34.1.

[16] *See* proposed Holdco Articles, Section 35.1.

[17] *See* proposed Holdco Articles, Sections 35.1, 35.4.

[18] *See* proposed Holdco Articles of Association, Section 35.7.

ownership restriction would be suspended for so long as the Holdco ownership restriction is exceeded.[19]

Further, the Holdco Articles would permit the Holdco board of directors to require any person and its related persons that the board reasonably believes to be subject to the voting or ownership limitations summarized above, or owning in the aggregate 5% or more of the then issued and outstanding shares of Holdco entitled to vote on any matter, which ownership has not been reported to Holdco, to provide Holdco information regarding such ownership upon the request of the Holdco board of directors.[20]

The Holdco board of directors may waive the provisions regarding voting and ownership limits, subject to a determination by the Holdco board of directors that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any of the U.S. Regulated Subsidiaries, Holdco, NYSE Group, or ISE Holdings to discharge their respective responsibilities under the Act and the rules and regulations thereunder;
- Will not impair the ability of any of the European Market Subsidiaries, Holdco, or Euronext to discharge their respective responsibilities under the European Exchange Regulations; [21]
- Is otherwise in the best interest of Holdco, its shareholders, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries; and
- Will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.[22]

Such resolution expressly permitting such voting or ownership must be filed with and approved by the Commission under Section 19 of the Act [23] and filed with and approved by each European Regulator having appropriate jurisdiction and authority.

In addition, for so long as Holdco directly or indirectly controls the Exchange, NYSE Market, NYSE Arca, or NYSE Arca Equities or any facility of NYSE Arca, NYSE Amex, ISE, EDGA, or EDGX, the Holdco board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member of NYSE, an ETP Holder of NYSE Arca Equities, or an OTP Holder or an OTP Firm of NYSE Arca,[24] a member of Amex, a member of ISE, a member of EDGA, or a member of EDGX.[25] Further, the Holdco board of directors also cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) (a ''U.S. Disqualified Person'') or has been determined by a European Regulator to be in violation of laws or regulations adopted in accordance with the European Directive on Markets in Financial Instruments applicable to any European Market Subsidiary requiring such person to act fairly, honestly and professionally (a ''European Disqualified Person'').[26]

Members that trade on an exchange traditionally have had ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[27] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

The Commission finds the ownership and voting restrictions in the proposed Holdco Articles are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.

2. NYSE Euronext and NYSE Group

Following the Combination, NYSE Euronext will be a wholly-owned subsidiary of Holdco. Furthermore, NYSE Euronext will no longer be a publicly-held company and the NYSE Exchanges have proposed certain changes to reflect that NYSE Euronext will become a wholly owned subsidiary and will no longer be publicly held.[28]

[19] *See* proposed Holdco Articles, Section 35.6.

[20] *See* proposed Holdco Articles, Section 35.9.

[21] *See* proposed Holdco Articles, Sections 34.3, 35.3, and Section 1.1 for the definitions of ''European Exchange Regulations'' and ''European Market Subsidiary.''

[22] *See* Proposed Holdco Articles, Section 1.1, for the definition of ''European Regulator.''

[23] 15 U.S.C. 78s.

[24] ''ETP Holder'' is defined in the NYSE Arca Equities rules of NYSE Arca. ''OTP Holder'' and ''OTP Firm'' are defined in the rules of NYSE Arca.

[25] *See* Holdco Articles at 34.3 and 35.3.

[26] *See id.*

[27] *See, e.g.,* Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order approving registration application of BATS Y–Exchange, Inc. as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order approving registration applications of EDGX Exchange, Inc. and EDGA Exchange, Inc. as national securities exchanges); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order approving registration application of BATS Exchange, Inc. as a national securities exchange); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (order approving proposed combination between NYSE Group, Inc. and Euronext N.V.); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving merger of New York Stock Exchange, Inc. and Archipelago, and demutualization of New York Stock Exchange, Inc. (''NYSE Inc.-Archipelago Merger Order'')); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19).

[28] The NYSE Exchanges propose to amend certain provisions of NYSE Euronext's organizational documents to reflect that, after the Combination, NYSE Euronext will be an intermediate holding company and will no longer be a publicly-held company. The NYSE Euronext Certificate and the NYSE Euronext Bylaws would be amended to (1) simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly-owned subsidiary; (2) conform certain provisions to analogous provisions of the organizational documents of NYSE Group, which will likewise be an indirect wholly-owned subsidiary of Holdco following completion of the Combination; and (3) make certain clarification and technical edits (for example, to conform the use of defined terms and other provisions, and to update cross-references to sections, consistent with the other amendments to the NYSE Euronext Certificate and the NYSE Euronext Bylaws set forth in this Proposed Rule Change). In addition, the current Independence Policy of the NYSE Euronext board of directors would cease to be in effect.

Generally, the NYSE Exchanges propose, in part, the following changes to the NYSE Euronext Certificate and Bylaws: (i) decreasing the number of authorized shares of NYSE Euronext, (ii) allowing shareholders to call special meetings, take shareholder action by written consent, and to postpone such meetings, (iii) allowing shareholders to fill board vacancies, (iv) deleting provisions requiring a supermajority vote of shareholders to amend or repeal certain sections of the NYSE Euronext certificate of incorporation, (v) clarifying that notice of shareholder meetings is not required if waived, (vi) deleting the requirement that directors be elected by a majority of the votes cast, (vii) deleting provisions requiring advance notice from shareholders of shareholder director nominations or shareholder proposals, (viii) deleting provisions relating to the mechanics of shareholders' meetings, such as the appointment of an inspector of elections, (ix) clarifying that NYSE Euronext may not have a Nominating and Governance Committee, and (x) deleting the requirement that 75% of the Euronext board must be independent.

Generally, the NYSE Exchanges propose, in part, the following changes to NYSE Group's Certificate and Bylaws: (i) Amending the issuance and certificate of designations for preferred stock; (ii) clarifying the ability to fix the number of directors and making the board's ability to remove directors subject to the rights of holder of preferred stock; (iii) clarifying that notice of shareholder meetings is not

NYSE Euronext will act as a holding company for the businesses of the NYSE Group and Euronext. NYSE Euronext will own all of the equity interests in NYSE Group and its subsidiaries, including the Exchange, NYSE Arca, and NYSE Amex and all of the equity interests in Euronext and its respective subsidiaries. Section 19(b) of the Act and Rule 19b–4 thereunder require a SRO to file proposed rule changes with the Commission. Although NYSE Euronext and NYSE Group are not SROs, certain provisions of the current NYSE Euronext's Amended and Restated Certificate of Incorporation (''NYSE Euronext Certificate of Incorporation''), NYSE Euronext's Amended and Restated Bylaws (''NYSE Euronext Bylaws''), NYSE Group's Amended and Restated Certificate of Incorporation (''NYSE Group Certificate of Incorporation''), and NYSE Group's Amended and Restated Bylaws (''NYSE Bylaws'') are rules of an exchange [29] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the NYSE Exchanges have filed the proposed NYSE Euronext Certificate of Incorporation, the proposed NYSE Euronext Bylaws, the proposed NYSE Group Certificate of Incorporation, and the proposed NYSE Group Bylaws with the Commission.

Voting and Ownership Limitations; Changes in Control

The NYSE Exchanges have proposed changing the voting and ownership limitations of NYSE Euronext to include a statement that such limitations would not be applicable as long as Holdco owned all of the issued and outstanding shares of NYSE Euronext and only for so long as NYSE Euronext directly or indirectly controls any NYSE U.S. Regulated Subsidiary or any European Market Subsidiary.[30] Instead, while NYSE Euronext is a wholly-owned subsidiary of Holdco, there shall be no transfer of the shares of NYSE Euronext without the approval of the Commission.[31] If NYSE Euronext ceases to be wholly owned by Holdco, but directly or indirectly controls any NYSE U.S. Regulated Subsidiary or any European Market Subsidiary, the voting and ownership limitations would apply.

In addition, the NYSE Exchanges propose amending the voting and ownership restrictions in the proposed NYSE Euronext Certificate. The NYSE Exchanges propose amending the NYSE Euronext Certificate to: (i) Change the 10% percent threshold for the voting restriction to a 20% threshold, (ii) change the 20% percent threshold for the ownership restriction to a 40% restriction, except that the 20% threshold would continue to apply to any person who is (or with respect to whom a related person is) [32] a member of the Exchange or NYSE Amex, an ETP Holder, or an OTP Holder or OTP Firm; and (iii) incorporate NYSE Amex into certain provisions. The NYSE Euronext board of directors would be unable to waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member of the Exchange or NYSE Amex, an ETP Holder, an OTP Holder or an OTP Firm.[33] Similar changes have been proposed for NYSE Group.[34] Moreover, the NYSE Exchanges have proposed changing the voting and ownership limitations of NYSE Group so that such limitations would apply only for so long as NYSE Group directly or indirectly controls any NYSE U.S. Regulated Subsidiary or any European Market Subsidiary.[35]

The Commission finds that the changes to the ownership and voting restrictions in the proposed NYSE Euronext Certificate and the proposed NYSE Group Certificate, as well as the change in control provisions in the NYSE Euronext Certificate are consistent with the Act. The Commission notes that the proposed ownership and voting percentage restrictions are consistent with thresholds previously approved by the Commission.[36] Moreover, the transfer, ownership and voting restrictions should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the NYSE U.S. Regulated Subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act.

In addition, to allow Holdco to wholly own and vote all of NYSE Euronext stock upon consummation of the Combination, Holdco delivered a written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the current NYSE Euronext Certificate of Incorporation requesting approval of its ownership and voting of NYSE Euronext stock in excess of the NYSE Euronext voting restriction and NYSE Euronext ownership restriction.[37] The board of directors of NYSE Euronext must resolve to expressly permit ownership or voting in excess of the NYSE

required if waived in accordance with the NYSE Group Bylaws; (iv) clarifying that a list of shareholders would be deleted; (v) deleting a reference to a special meeting of shareholders; (vi) clarifying that notice of any special meeting of directors is not required if waived and updating methods of delivery of notice; (vii) deleting restrictions on telephonic participation in meetings; (viii) revising the persons authorized to execute contracts; (ix) simplifying certain aspects of the indemnification and expense advancement provisions in light of the fact that there are not expected to be any independent, non-executive directors of NYSE Group; (x) amending and clarifying the manner in which the NYSE Group Bylaws may be amended, repealed, or adopted; and (xi) amending the definition of ''Regulated Subsidiary'' in the NYSE Group Bylaws.

[29] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If NYSE Euronext decides to change its Certificate of Incorporation or Bylaws, NYSE Euronext must submit such change to the board of directors of the Exchange, NYSE Market, NYSE Regulation, NYSE Amex, NYSE Arca Equities, and NYSE Arca, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* current NYSE Euronext Certificate of Incorporation, Article X and current NYSE Euronext Bylaws, Article X, Section 10.10(C); *see also,* proposed NYSE Euronext Certificate of Incorporation, Article X and proposed NYSE Euronext Bylaws, 10.10(C). If NYSE Group decides to change its Certificate of Incorporation or Bylaws, NYSE Group must submit such change to the board of directors of the Exchange, NYSE Market, NYSE Regulation, NYSE Amex, NYSE Arca Equities, and NYSE Arca, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* current NYSE Group Certificate of Incorporation, Article XII and current NYSE Group Bylaws, Section 7.9(A); *see also* proposed NYSE Group Certificate of Incorporation, Article XII and proposed NYSE Group Bylaws, Section 7.9(b).

[30] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Introduction.

[31] *See* proposed NYSE Euronext Certificate of Incorporation, Article IV, Section 4.

[32] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Section 1(L) for the definition of ''related person.''

[33] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Section 2(A).

[34] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 2(C).

[35] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Section 4(b).

[36] *See e.g.,* Securities Exchange Release Nos. 34–49718 (May 17, 2004) (File No. SR–PCX–2004–08), 69 FR 29611 (approval of rule change proposed by the Pacific Exchange, Inc.); 49098 (January 16, 2004) (File No. SR–PHLX–2003–73), 69 FR 3974 (approval of rule change proposed by the Philadelphia Stock Exchange, Inc.); and 50170 (August 9, 2004) (File No. SR–PCX–2004–56), 69 FR 50419 (approval of rule change proposed by the Pacific Exchange, Inc. relating to initial public offering of parent of Archipelago Exchange, L.L.C.).

[37] Prior to permitting any person to exceed the ownership limitation and voting limitation, such person must deliver notice of such person's intention to own or vote shares in excess of the ownership limitation or voting limitation to the NYSE Euronext board of directors. *See* current NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

Euronext voting restriction limitation and NYSE Euronext ownership restriction. Such resolution of the NYSE Euronext board of directors must be filed with and approved by the Commission under Section 19(b) of the Act, and become effective thereunder. Further, the board of directors may not approve any voting or ownership in excess of the limitations unless it determines that such ownership or exercise of voting rights (i) will not impair the ability of the NYSE U.S. Regulated Subsidiaries, NYSE Euronext, and NYSE Group to discharge their respective responsibilities under the Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, NYSE Euronext, or Euronext to discharge their respective responsibilities under the European Exchange Regulations, (iii) is otherwise in the best interests of NYSE Euronext, its shareholders, and the NYSE U.S. Regulated Subsidiaries, and (iv) will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.[38] For so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, NYSE Arca, NYSE Arca Equities, any facility of NYSE Arca, or NYSE Amex, the NYSE Group board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member Exchange,[39] an ETP Holder, an OTP Holder or an OTP Firm,[40] or member of NYSE Amex.[41] Further, the NYSE Euronext board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a U.S. Disqualified Person or a European Disqualified Person.

The notice from Holdco included representations that neither Holdco, nor any of its related persons, is: (1) A NYSE Member; (2) an Amex Member; (3) an ETP Holder, an OTP Holder or an OTP Firm; or (4) a U.S Disqualified Person or a European Disqualified Person. The NYSE Euronext board of directors adopted a resolution approving Holdco's request that it be permitted, either alone or with its related persons, to exceed the NYSE Euronext voting restriction and the NYSE Euronext ownership restriction.[42]

The Commission believes it is consistent with the Act to allow Holdco to wholly own and vote all of the outstanding common stock of NYSE Euronext. The Commission notes that Holdco represents that neither Holdco nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act), or is a member of the Exchange or NYSE Amex, an ETP Holder, an OTP Holder or an OTP Firm, or a European Disqualified Person. Moreover, Holdco has comparable voting and ownership limitations to ISE Holdings.[43] Holdco has also included in its corporate documents certain provisions designed to maintain the independence of the NYSE U.S. Regulated Subsidiaries' self-regulatory functions from Holdco, NYSE Euronext and NYSE Group.[44] Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of NYSE Euronext common stock by Holdco will not impair the ability of the Commission or any of the NYSE U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

3. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE Amex, NYSE Market and NYSE Regulation

The Third Amended and Restated Operating Agreement, dated as of April 1, 2009, of the Exchange (the ''Exchange Operating Agreement''), currently provides that (1) a majority of the members of the Exchange's board of directors must be U.S. persons and members of the board of directors of NYSE Euronext who satisfy the independence requirements of the NYSE Euronext board, and (2) at least 20% of the Exchange's board members must be persons who are not board members of NYSE Euronext but who qualify as independent under the independence policy of the NYSE Euronext board of directors (the ''Non-Affiliated Exchange Directors'').[45] The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.[46]

Under the Proposed Rule Change, these provisions would be amended (i) to provide that the independent members of the Exchange's board of directors, rather than the nominating and governance committee of the NYSE Euronext board of directors, will designate the Non-Affiliated Exchange Directors and make the other related determinations that were previously to be made by the nominating and governance committee of the NYSE Euronext board of directors; (ii) to provide that instead of using the independence policy of the NYSE Euronext board of directors to assess the independence of the Exchange's board members, the Exchange will have its own independence policy (the ''SRO Director Independence Policy''); (iii) in light of the fact that the board of directors of NYSE Euronext will be decreased in size once it becomes a wholly-owned subsidiary of Holdco, the requirement that a majority of the members of the Exchange's board of directors must be members of the board of directors of NYSE Euronext would be eliminated; and (iv) to provide that at least 20% of the Exchange's directors must be persons who are not members of the board of directors of Holdco (rather than referring to the board of directors of NYSE Euronext). Substantially the same revisions would be made to the analogous provisions of the Amended and Restated Operating Agreement of NYSE Amex, the Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation.

The SRO Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE Amex under the Proposed Rule Change would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that certain conforming changes would be made, including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these NYSE U.S. Regulated Subsidiaries. In

[38] *See* proposed NYSE Euronext Certificate of Incorporation, Article V, Sections 1(C) and 2(C).

[39] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 4(b)(2)(C)(v).

[40] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 4(b)(2)(C)(iv).

[41] *See* proposed NYSE Group Certificate of Incorporation, Article IV, Sections 4(b)(1)(A)(y) and 4(b)(2)(C)(vi).

[42] Such resolutions of the NYSE Euronext board of directors were filed as part of the proposed rule change. *See e.g.,* Exhibit A to the Notice, which exhibit is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*), at the Commission's Public Reference Room, at the NYSE, and on the NYSE's Web site (*http://www.nyse.com*).

[43] *See supra* notes 12–18 and accompanying text.

[44] *See infra* notes 58–69 and accompanying text.

[45] *See* Third Amended and Restated Operating Agreement of New York Stock Exchange LLC, Section 2.03(a).

[46] *See id.*

particular, (i) references to NYSE Euronext would refer instead to the relevant NYSE U.S. Regulated Subsidiary or Holdco, as applicable; (ii) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these NYSE U.S. Regulated Subsidiaries contain the independence and other qualification requirements for directors; (iii) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext's ownership of NYSE U.S. Regulated Subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, these NYSE U.S. Regulated Subsidiaries are not holding companies; (iv) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these NYSE U.S. Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the SRO Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee of NYSE Regulation, Inc.; (v) references to NYSE Alternext, Inc. would refer instead to NYSE Amex, because of this entity's name change; (vi) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization cannot qualify as an independent director of these NYSE U.S Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (vii) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these NYSE U.S Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a ''foreign private issuer'' listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed SRO Director Independence Policy, such persons could not be deemed to be independent directors of the relevant NYSE U.S. Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),[47] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. Further, the Commission notes that the NYSE Exchanges are not proposing to change any of the provisions relating to (i) the fair representation of the members of each of the NYSE Exchanges in the selection of its directors and administration of its affairs or (ii) one or more of the directors of each of the NYSE Exchanges being representative of issuers and investors and not being associated with a member of the exchange or with a broker dealer, each as required under Section 6(b)(3) of the Act.[48]

4. Deutsche Börse/ISE Holdings

Following the Combination, ISE Holdings's indirect parent, Deutsche Börse, will become a subsidiary of Holdco. Deutsche Börse will own all of the equity interests in ISE and approximately 31.54% interest in EDGA and EDGX. Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although ISE Holdings is not an SRO, certain provisions of its Amended and Restated Certificate of Incorporation (the ''ISE Holdings Certificate'') and Amended and Restated Bylaws of ISE Holdings (''the ISE Holdings Bylaws'') are rules of an exchange[49] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the DB U.S. Regulated Subsidiaries have filed a proposed change to the ISE Holdings Bylaws with the Commission.[50]

Voting and Ownership Limitations; Changes in Control of the Exchange

The proposed Second Amended and Restated Bylaws of ISE Holdings (''Proposed ISE Bylaws'') include restrictions on the ability to vote and own shares of stock of ISE Holdings. Under the ISE Holdings Certificate, no person (either alone or together with its related persons)[51] will be entitled to vote or cause the voting of shares of stock of ISE Holdings beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter. No person (either alone or together with its related persons) may acquire the ability to vote more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons not to vote shares of ISE Holdings's outstanding capital stock.

In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of ISE Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter.[52] If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (''ISE Trust''). The ISE Holdings Certificate and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive

[47] 15 U.S.C. 78f(b)(1).

[48] 15 U.S.C. 78f(b)(3).

[49] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If ISE Holdings decides to change its Bylaws, ISE Holdings must submit such change to the board of directors of ISE, EDGA and EDGX, and if any or all of such board of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* ISE Bylaws, Article X, Section 10.1.

[50] *See* proposed Second Amended and Restated Bylaws of International Securities Holdings, Inc. attached as Exhibit A to the EDGA Notice, EDGX Notice and ISE Notice which exhibit is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*) and at the Commission's Public Reference Room.

[51] *See* ISE Holdings Certificate, Article IIB, Sections III(a)(i) and (b)(i).

[52] *See* ISE Holdings Certificate, Article FOURTH, Section III(a)(1)(A) and (b) and ISE Holdings Bylaws Article XI.

these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Act.[53]

The ISE Holdings board of directors may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if, in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- Will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Act and the rules and regulations thereunder;
- Is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- Will not impair the Commission's ability to enforce the Act;
- For so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- Neither such person nor any of its related persons is subject to any ''statutory disqualification'' (as such term is defined in Section 3(a)(39) of the Act).[54]

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Act.[55]

In addition, to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

The Commission believes it is consistent with the Act to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings. The Commission notes that Holdco represents that neither Holdco nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any ''statutory disqualification.''

Holdco has also included in its corporate documents certain provisions designed to maintain the independence of the DB U.S. Regulated Subsidiaries' self-regulatory functions from Holdco and Deutsche Börse.[56] Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of ISE Holdings common stock by Holdco will not impair the ability of the Commission or any of the DB U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

B. Relationship of Holdco, NYSE Euronext, Deutsche Börse, SWX, ISE Holdings, NYSE Group, and the U.S. Regulated Subsidiaries; Jurisdiction Over Holdco

Although Holdco itself will not carry out regulatory functions, its activities with respect to the operation of any of the U.S. Regulated Subsidiaries must be consistent with, and not interfere with, the U.S. Regulated Subsidiaries' self-regulatory obligations. The proposed Holdco corporate documents include certain provisions that are designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from Holdco, NYSE Euronext, ISE Holdings and NYSE Group, enable the U.S. Regulated Subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[57] and facilitate the ability of the U.S. Regulated Subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.[58]

For example, under the proposed Holdco Articles, Holdco shall comply with the U.S. federal securities laws, the European Exchange Regulations, and the respective rules and regulations thereunder; shall cooperate with the Commission, the European Regulators, and the U.S. Regulated Subsidiaries.[59] Also, each director, officer, and employee of Holdco, to the extent in discharging his or her responsibilities shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the U.S. Regulated Subsidiaries.[60] In addition, in discharging his or her responsibilities as a member of the board, each director of Holdco must, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of the U.S. Regulated Subsidiaries to carry out their responsibilities under the Act, on the ability of the European Market Subsidiaries to carry out their responsibilities under the European Exchange Regulations as operators of European Regulated Markets, and on the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco (i) to engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.[61] For so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and the European Market Subsidiaries (to the extent of each European Market Subsidiaries' self-regulatory function).[62] Further, Holdco agrees to keep confidential all confidential information pertaining to: (1) The self-regulatory function of the any U.S. Regulated Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the U.S. Regulated Subsidiaries; and (2) the self-regulatory function of the European Market Subsidiaries under the European Exchange Regulations as operator of a European Regulated

[53] 15 U.S.C. 78s(b).

[54] *See* Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

[55] 15 U.S.C. 78s(b).

[56] *See infra* notes 58–69 and accompanying text.

[57] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[58] *See* proposed Holdco Articles Section 3.2.

[59] *See* proposed Holdco Articles Section 3.2(a) and (b).

[60] *See* proposed Holdco Articles Section 3.2(l).

[61] *See* proposed Holdco Articles, Section 3.2(k).

[62] *See* proposed Holdco Articles, Sections 3.2(i) and 3.2(j).

Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the European Market Subsidiaries, and not use such information for any commercial[63] purposes.[64]

In addition, Holdco's books and records shall be subject at all times to inspection and copying by the Commission, the European Regulators, any U.S. Regulated Subsidiary (provided that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight) and any European Market Subsidiary (provided that such books and records are related to the operation or administration of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight).[65] Holdco's books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and Holdco's books and records related to European Market Subsidiaries shall be maintained in the home jurisdiction of one or more of the European Market Subsidiaries.[66] The Holdco Articles also provide that if and to the extent that any of Holdco's books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries (each such book and record an ''Overlapping Record''), Holdco shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.[67]

In addition, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, directors, and employees of Holdco shall be deemed to be the books, records, premises, officers, directors, and employees of the U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act, and for so long as Holdco directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, directors, and employees of Holdco shall be deemed to be the books, records, premises, officers, directors, and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European Exchange Regulations.[68]

Holdco and its directors and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, Holdco's officers and employees whose principal place of business and residence is outside of the United States irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the U.S. Regulated Subsidiaries, and to the jurisdiction of the European Regulators and European courts with respect to activities relating to the European Market Subsidiaries.[69]

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (i) cooperation with the Commission and such U.S. Regulated Subsidiaries; (ii) compliance with U.S. federal securities laws; (iii) inspection and copying of Holdco's books, records and premises; (iv) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (v) maintenance of books and records in the United States; (vi) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (vii) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (viii) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles.

Further, Holdco acknowledges that it is responsible for referring possible rule violations to the NYSE Exchanges and the DB Exchanges. Holdco will become a party to the agreement among NYSE Euronext, NYSE Group, the Exchange, NYSE Market and NYSE Regulation to provide adequate funding for NYSE Regulation.[70] In addition, Holdco will become a party to the agreement among Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX (formerly SWX), SIX Group (formerly SWX Group), Verein SIX Swiss Exchange (formerly SWX Swiss Exchange), U.S. Exchange Holdings, Inc., ISE Holdings and ISE to provide for adequate funding for ISE's regulatory responsibilities.[71]

Finally, the proposed Holdco Articles require that, for so long as Holdco controls, directly or indirectly, any of the U.S. Regulated Subsidiaries, any changes to the proposed Holdco Articles be submitted to the board of directors of such U.S. Regulated Subsidiaries, and if any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act[72] and the rules thereunder, such change shall not be effective until filed with or filed with and approved by, the Commission.[73]

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. With respect to the maintenance of books and records of Holdco, the Commission notes that while Holdco has the discretion to maintain Overlapping Records in either the United States or the home jurisdiction of one or more of the European Market Subsidiaries, Holdco is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits Holdco from providing such books and records to the Commission for inspection and copying. Moreover, the Commission notes that Deutsche Börse and NYSE Euronext, the two indirect entities currently controlling the U.S. Regulated Subsidiaries, are under existing obligations to make their books and records available in compliance with the requirements of Rule 17a–1(b).[74] The Commission notes that the respective obligations of NYSE Euronext and Deutsche Börse established in these prior orders remain in effect.[75] The

[63] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[64] *See* Holdco Articles Section 3.2(h).

[65] *See* proposed Holdco Articles Section 3.2(e).

[66] *See* proposed Holdco Articles Section 3.2(g).

[67] *See id.*

[68] *See* proposed Holdco Articles, Section 3.2(f)(i) and (ii).

[69] *See* proposed Holdco Articles, Sections 3.2 (c) and (d).

[70] *See, e.g.,* Notice at 65293.

[71] *See, e.g.,* ISE Notice at 65250.

[72] 15 U.S.C. 78s.

[73] *See* proposed Holdco Articles, Section 36.2.

[74] *See Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) and 56955 (Dec. 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).*

[75] NYSE Euronext is currently required to maintain in the United States originals or copies of books and records that relate to both the NYSE U.S. Regulated Subsidiaries and its European market subsidiaries covered by Rule 17a–1(b) promptly after creation of such books and records. *See supra,* note 74, 72 FR 8041, 8042. The Commission notes that NYSE Euronext is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits NYSE Euronext from providing such books and records to the Commission for inspection and copying. *See supra,* note 75, 72 FR at 8041. If Deutsche Börse fails to make its books and records available to the Commission, the Commission could bring an action under, among other provisions, Section 17 of the

Continued

Commission also notes that the trusts established under the prior orders also remain in effect unchanged, other than revising the reference in the NYSE Euronext trust agreement (''NYSE Trust'') from the nominating and governance committee of NYSE Euronext to the nominating and governance committee of Holdco.[76] In addition, the Commission also notes that the 2007 Resolutions and Supplemental Resolutions remain in effect.

Under Section 20(a) of the Act,[77] any person with a controlling interest in the U.S. Regulated Subsidiaries shall be jointly and severally liable with and to the same extent that the U.S. Regulated Subsidiaries are liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[78] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[79] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to Holdco's dealings with the U.S. Regulated Subsidiaries.

Act and Rule 17a–1(b) thereunder against the DB U.S. Regulated Subsidiaries pursuant to Section 19(h) of the Act. *See supra,* note 75, 72 FR at 71984.

[76] The ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains an ownership or voting interest in ISE Holdings in excess of the ownership voting limits set forth in ISE's corporate governance documents. In addition, the ISE Trust would hold capital stock of ISE Holdings in the event of a Material Compliance Event. A ''Material Compliance Event'' is defined under the ISE Trust agreement as any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to its respective commitments under the Resolutions in any material respect. The Trust holds a call option over Holdings capital stock, which may be exercised if a Material Compliance Event has occurred and continues to be in effect. *See surpa,* note 75, 72 FR at 71984.

The NYSE Trust was created, in part, to take actions to mitigate the effects of any material adverse change in European law that has an ''extraterritorial'' impact on the non-European issuers listed on NYSE Group securities exchanges, non-European financial services firms that are members of any NYSE Group securities exchange, or any NYSE Group securities exchange. *See supra,* note 75, 72 FR at 8042.

[77] 15 U.S.C. 78t(a).

[78] 15 U.S.C. 78t(e).

[79] 15 U.S.C. 78u–3.

C. Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors, except that, in part, (i) a majority (as opposed to 75%) of the board of Holdco would be required to be independent; (ii) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the Holdco board; (iii) the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (iv) the Holdco Independence Policy would not be applicable to NYSE Regulation, Inc., the Exchange, NYSE Amex or NYSE Market, which would have their own director independence policy; and (v) references to the independence standards and criteria in the Dutch Corporate Governance Code would be added, because such standards and criteria would apply to Holdco, a Dutch company, and would supplement (rather than supersede or limit) the other independence standards and criteria set forth in the Holdco Independence Policy.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),[80] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. The Commission notes that a majority of Holdco's Board would still need to be independent. In addition, the Commission notes that as a company listed on the Exchange, Holdco's board of directors must also satisfy the independence requirements applicable to a listed company's board of directors as contained in the Exchange's Listed Company Manual. Further, the Commission notes that there are requirements in Holdco's Independence Policy that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE Amex.

[80] 15 U.S.C. 78f(b)(1).

D. Listing of Holdco's Securities

Holdco intends to list its shares of common stock for trading on the Exchange, and apply for admission of its shares to trading on the regulated market of the Frankfurt Stock Exchange and the regulated market segment of the Euronext Paris. Pursuant to NYSE Rule 497, any security of Holdco and its affiliates shall not be approved for listing on the Exchange unless NYSE Regulation determines that such securities satisfy the Exchange's rules for listing, and such finding is approved by the NYSE Regulation board of directors. The Commission finds that the proposed procedure for the initial listing of Holdco common stock is consistent with the Act.

NYSE Regulation will be responsible for all Exchange listing-compliance decisions with respect to Holdco as an issuer. NYSE Regulation will prepare a quarterly report, as described in Rule 497(c)(1) summarizing its monitoring of Holdco's compliance with such listing standards. This report will be provided to the NYSE Regulation board of directors and a copy will be forwarded promptly to the Commission. Once a year, an independent accounting firm will review Holdco's compliance with the Exchange's listing standards and a copy of its report will be forwarded promptly to the Commission. If NYSE Regulation determines that Holdco is not in compliance with any applicable listing standard of the Exchange, NYSE Regulation will notify Holdco promptly and request a plan for compliance. Within five business days of providing such notice to Holdco, NYSE Regulation will file a report with the Commission identifying the date on which Holdco is not in compliance with the listing standard at issue and any other material information conveyed to Holdco in the notice of non-compliance. Within five business days of receiving a plan of compliance from the issuer, NYSE Regulation will notify the Commission of such receipt, whether the plan was accepted by NYSE Regulation or what other action was taken with respect to the plan, and the time period provided to regain compliance with the Exchange's listing standard, if any. The Commission believes that the procedures for monitoring of the listing of and trading of Holdco's securities are consistent with the Act.

E. Options Trading Rights

The Commission received three similar comment letters[81] on the proposed rule changes regarding certain

[81] *See* Rothlein Letters, *supra* note 5.

Option Trading Rights (''OTRs'') that were separated from full New York Stock Exchange, Inc.[82] seats (''Separated OTRs''). All New York Stock Exchange seat ownership (with or without OTRs) was extinguished in the 2006 demutualization of New York Stock Exchange, Inc.[83] Although the commenter takes no position on the merits of the Combination, the commenter opposes the Combination on the grounds that the Exchange does not fully own all of the assets being transferred. Specifically, the commenter contends that the owners of Separated OTRs retained their Separated OTRs, even after the New York Stock Exchange, Inc. exited the options business in 1997, with the expectation that their ownership of the Separated OTRs would afford them full rights to trade options under the auspices of New York Stock Exchange, Inc. or its successor entity. The commenter contends that such ownership gives a right to trade options on NYSE Market and NYSE Arca, and after the Combination, Euronext. The commenter refers to its comment letters in connection with the demutualization of New York Stock Exchange, Inc. in its merger with Archipelago as well as the combination of NYSE Group and Euronext N.V.[84] The commenter asked that reserves be put aside for the Exchange to meet its obligations to Separated OTR holders. The NYSE Response to Comments states that the issue of the rights of owners of Separated OTRs is not before the Commission in the context of the NYSE Exchanges' proposed rule filings and notes that the NYSE Exchanges are not proposing in their respective filings a change in the trading rights on the Exchange, NYSE Amex or NYSE Arca, respectively.[85]

The issue of the rights of owners of Separated OTRs is not before the Commission in the context of this rule filing. Pursuant to Section 19(b)(1) of the Act,[86] an SRO (such as NYSE) is required to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. Further, pursuant to Section 19(b)(2) of the Act,[87] the Commission shall approve a proposed rule change filed by an SRO if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is 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[88] that the proposed rule changes (SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[89]

Kevin M. O'Neill,

Deputy Secretary.

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[82] New York Stock Exchange, Inc. is the predecessor entity to NYSE. *See* NYSE Inc.-Archipelago Merger Order, *supra* note 27.

[83] *See* NYSE Inc.-Archipelago Merger Order, *supra* note 27.

[84] *See* Rothlein Letters, *supra* note 5. The Commission notes that the commenter reiterated these points in its rebuttal to the NYSE Response to Comments, continuing to argue, in part, that it still retains an interest in certain trading rights and that the proposed rule changes do not comport with fair and equitable principles of trade. *See* Rothlein Rebuttal Letters, *supra* note 6.

[85] *See* NYSE Response to Comments, *supra* note 6.

[86] 15 U.S.C. 78s(b)(1).

[87] 15 U.S.C. 78s(b)(2).

[88] *Id.*

[89] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66170; File No. SR–ISE–2012–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

January 17, 2012.

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 January 3, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in 103 options classes (the ''Select Symbols'').[3] The purpose of this proposed rule change is to amend the list of Select Symbols on the Exchange's Schedule of Fees, titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Complex Order Maker/Taker fees for symbols that are in the Penny Pilot Program'' in order to attract additional order flow to the Exchange. The Exchange is proposing to delete Market Vectors Semiconductor ETF (''SMH'') from the list of Select Symbols. With this proposed rule change, SMH will no longer be subject to the Exchange's maker/taker fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular,

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove SMH from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying non-maker/taker fees to SMH, including the opportunity to receive payment for order flow, will attract order flow in SMH to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove SMH because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the maker/taker fees and rebates, which would not include SMH. Also, all market participants would be uniformly subject to the non-maker/taker fees, which would include SMH.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–02. 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–ISE–2012–02 and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1176 Filed 1–20–12; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66172; File No. SR–ISE–2012–03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

January 18, 2012.

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 January 5, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] The purpose of this proposed rule change is to amend the list of Select Symbols on the Exchange's Schedule of Fees, titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Complex Order Maker/Taker fees for symbols that are in the Penny Pilot Program'' in order to attract additional order flow to the Exchange. The Exchange is proposing to delete AMR Corporation (''AMR'') from the list of Select Symbols. With this proposed rule change, AMR will no longer be subject to the Exchange's maker/taker fees.

The Exchange also proposes to make a non-substantive, clarifying change to page 21 of the Schedule of Fees, titled ''Rebates and Fees for Adding and Removing Liquidity for complex orders in NDX and RUT.'' The Exchange recently adopted fees and rebates for complex orders in NDX and RUT [4] and now proposes to clarify that the $0.50 per contract rebate payable to Priority Customer complex orders when these orders trade with non-customer orders in the Complex Order Book is applicable only to complex orders in NDX and RUT by deleting the words ''in the Select Symbols'' from footnote 2 on page 21 of the Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove AMR from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying non-maker/taker fees to AMR, including the opportunity to receive payment for order flow, will attract order flow in AMR to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove AMR because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the maker/taker fees and rebates, which would not include AMR. Also, all market participants would be uniformly subject to the non-maker/taker fees, which would include AMR.

Finally, the Exchange believes that clarifying that the rebate payable to Priority Customer complex orders when these orders trade with non-customer orders in the Complex Order Book is applicable only to complex orders in NDX and RUT is equitable and reasonable because it clarifies the applicability of the rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–03 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–ISE–2012–03. 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–ISE–2012–03 and should be submitted on or before February 13, 2012.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Securities Exchange Act Release No. 66084 (January 3, 2012) (SR–ISE–2011–84).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1238 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66167; File No. SR–CBOE–2012–002]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of a CBSX Clearly Erroneous Policy Pilot Program

January 17, 2012.

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 January 4, 2012, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a clearly erroneous policy pilot program pertaining to the CBOE Stock Exchange, LLC (''CBSX'', the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Certain amendments to Rule 52.4, *Clearly Erroneous Policy,* were approved by the Commission on September 10, 2010 on a pilot basis. The pilot is currently set to expire on January 31, 2012.[3] The clearly erroneous policy changes were developed in consultation with other markets and the Commission staff to provide for uniform treatment: (i) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (ii) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange. Additional changes were also made to Rule 52.4 that reduce the ability of the Exchange to deviate from the objective standards set forth in the Rule. As the duration of the pilot expires on January 31, 2012, the Exchange is proposing to extend the effectiveness of the clearly erroneous policy changes to Rule 52.4 through July 31, 2012.

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis. Accordingly, the Exchange believes the proposed rule change is consistent with the Act[4] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b-4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010)(SR–CBOE–2010–056)(approval order establishing pilot through December 10, 2010); 63485 (December 9, 2010), 75 FR 78278 (December 15, 2010)(SR–CBOE–2010–113)(extension of pilot through April 11, 2011); 64227 (April 7, 2011), 76 FR 20796 (April 13, 2011)(SR–CBOE–2011–032) (extension of pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks as defined in Interpretation and Policy .03 of Rule 6.3C, Individual Stock Trading Pause Due to Extraordinary Market Volatility); and 65060 (August 9, 2011), 76 FR 50532 (August 15, 2011)(SR–CBOE–2011–077) (extension of pilot through January 31, 2012).

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 No. SR–CBOE–2012–002 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 No. SR–CBOE–2012–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–002 and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1236 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66166; File No. SR–CBOE–2012–001]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of the CBSX Individual Stock Trading Pause Pilot Program

January 17, 2012.

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 January 4, 2012, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the individual stock trading pause pilot program pertaining to the CBOE Stock Exchange, LLC (''CBSX,'' the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6.3C, Individual Stock Trading Pauses Due to Extraordinary Market Volatility, was approved by the Commission on June 10, 2010 on a pilot basis. The pilot is currently set to expire on January 31, 2012.[3] The rule was developed in consultation with U.S. listing markets to provide for uniform market-wide trading pause standards for certain individual stocks that experience rapid price movement.[4] As

[3] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–CBOE–2010–047) (approval order establishing pilot through December 10, 2010); 63502 (December 9, 2010), 75 FR 78306 (December 15, 2010) (SR–CBOE–2010–112) (extension of pilot through April 11, 2011); 64194 (April 5, 2011), 76 FR 2–389 (April 12, 2011) (SR–CBOE–2011–031) (extension of pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks); and 65070 (August 9, 2011), 76 FR 50516 (August 15, 2011) (SR–CBOE–2011–076) (extension of pilot through January 31, 2012). *See also* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (notice of filing of national market system plan to address extraordinary market volatility, which contains a limit up-limit down mechanism for NMS stocks).

[4] The pilot list of stocks originally included all stocks in the S&P 500 Index, but it has been

Continued

the duration of the pilot expires on January 31, 2012, the Exchange is proposing to extend the effectiveness of Rule 6.3C through July 31, 2012.

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis. Accordingly, the Exchange believes the proposed rule change is consistent with the Act [5] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1) [8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a stock when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

expanded over time to include all NMS stocks, other than rights and warrants. *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–CBOE–2010–065) (order approving expansion of the individual stock trading pause pilot to include all stocks in the Russell 1000 index and a pilot list of Exchange Traded Products); 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–CBOE–2011–049) (order approving further expansion of the individual stock trading pause pilot to include all NMS stocks effective August 8, 2011); and 65824 (November 23, 2011), 76 FR 74111 (November 30, 2011) (SR–CBOE–2011–111) (immediately effective rule change to amend the individual stock trading pause pilot to exclude all rights and warrants).

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 78(f)(b).

[7] 15 U.S.C. 78(f)(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

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.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2012–001 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 No. SR–CBOE–2012–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–001 and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1233 Filed 1–20–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66165; File No. SR–NASDAQ–2012–005]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Enhanced Display Distributor Fee

January 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2012, the NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to establish an optional tiered distributor fee for enhanced displays (the ''Enhanced Display Distributor Fee'').

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[3]

* * * * *

7026. Distribution Models

(a) *Display Solutions* [Reserved]

(1) Enhanced Displays (optional delivery method)

(A) The charges to be paid by Distributors for offering subscribers of Nasdaq Depth data controlled display products along with access to an API or similar solution shall be:

	Number of downstream subscribers
Monthly Enhanced Display Solution Fee per Distributor for right to display products containing API or similar solution.*	*1–299 users = $2,000/month.* *300–399 users = $3,000/month.* *400–499 users = $4,000/month.* *500–599 users = $5,000/month.* *600–699 users = $6,000/month.* *700–799 users = $7,000/month.* *800–899 users = $8,000/month.* *900–999 users = $9,000/month.* *1,000 users or more = $10,000/month.*

* Customers that are subscribing to certain enterprise depth capped fees as described in Nasdaq Rule 7023(a)(1)(c) are exempt from this fee.

(B) The monthly fee per Professional or Non-Professional subscriber for utilizing Nasdaq TotalView or Nasdaq OpenView data on a controlled display product with access to an API or similar solution through that display is the applicable Nasdaq TotalView or Nasdaq OpenView rates.

The monthly fee per Professional or Non-Professional subscriber for utilizing the Level 2 data for Nasdaq-listed securities on a controlled display product with access to an API or similar solution through that display is the applicable Nasdaq TotalView rates.

The monthly fee per Professional or Non-Professional subscriber for utilizing Nasdaq Level 2 data for NYSE, AMEX or regional listed securities on a controlled display product with access to an API or similar solution through that display is the applicable Nasdaq OpenView rates.

(2) The term ''non-professional'' shall have the same meaning as set forth in Nasdaq Rule 7011(b).

(3) The term ''Distributor'' shall have the same meaning as set forth in Nasdaq Rule 7019(c).

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend Nasdaq Rule 7026 (Distribution Models) to establish an optional Enhanced Display Solution Fee to further the distribution of Nasdaq TotalView, Nasdaq OpenView and/or Nasdaq Level 2 Information (collectively, ''Nasdaq Depth Information''). The new data distribution model (an ''Enhanced Display Solution'') offers a delivery method available to firms seeking simplified market data administration and may be offered by Distributors to external subscribers that are using the Nasdaq Depth Information internally.

The proposed optional Enhanced Display Solution Fee is intended to provide a new pricing option for Distributors who provide a controlled display product along with an Application Programming Interface

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

(''API'') or similar solution to subscribers. Non-display use is not permitted under the Enhanced Display Solution Fee structure. To ensure compliance with this new fee, Distributors must monitor for any non-display or excessive use suggesting that the subscriber is not in compliance. The Distributor is liable for any unauthorized use by the Enhanced Data subscribers under the Enhanced Display Solution. This proposed optional new fee only applies to external Distributors offering any Nasdaq Depth Information and who opt for an Enhanced Display option.

This new pricing and administrative option is in response to industry demand, as well as due to changes in the technology to distribute market data. By providing this new fee option, Distributors will have more administrative flexibility in their receipt and distribution of Nasdaq Depth Information. Distributors opting for the Enhanced Display Solution Fee would still be fee liable for the applicable Professional or Non-Professional subscriber fees for Nasdaq TotalView and Nasdaq OpenView, as described in Nasdaq Rule 7023.[4] Nasdaq proposes to permit Distributors to select the Enhanced Display Solution Fee at a minimum rate of $2,000 per month for up to 299 subscribers, and each tier of 100 users will be at an additional incremental rate of $1,000 per month up to a maximum of $10,000 per month for 1,000 or more subscribers per month. The Enhanced Display Solution Fee is independent from the applicable subscriber fees as described above. These new Enhanced Display Solution Fees will become fee liable for the billing month of April 2012.

This delivery option assesses a new fee schedule to Distributors of Nasdaq Depth Information that provide an API or similar solution from a controlled display. The Distributor must first agree to reformat, redisplay and/or alter the Nasdaq Depth Information prior to retransmission, but not to affect the integrity of the Nasdaq Depth Information and not to render it inaccurate, unfair, uninformative, fictitious, misleading or discriminatory. An Enhanced Display Solution is any controlled display product containing Nasdaq Depth Information where the Distributor controls a display of Nasdaq Depth Information, but also allows the subscriber to access an API or similar solution from that display product. The subscriber of an Enhanced Display may use the Nasdaq Depth Information for the subscriber's own purposes and may not redistribute the information outside of their organization. The subscriber may not redistribute the data internally to other users in the same organization.

In the past, Nasdaq has considered this type of retransmission to be an uncontrolled display since the Distributor does not control both the entitlements and the display of the information. Over the last ten years, Distributors have improved the technical delivery and monitoring of data and the Enhanced Display offering responds to an industry need to administer these new types of technical deliveries.

Some Distributors believe that an API or other distribution from a display is a better controlled product than a data feed and as such should not be subject to the same rates as a data feed. The offering of a new pricing option for an Enhanced Display would not only result in Nasdaq offering lower fees for certain existing Distributors, but will allow new Distributors to deliver Enhanced Displays to new clients, thereby increasing transparency of the market. Nasdaq continues to create new pricing policies aimed at increasing transparency in the market and believes this is another step in that direction. This includes the Enhanced Display Solution as well as the Managed Data Solution.

Accordingly, Nasdaq is establishing the Enhanced Display Solution Fee for Distributors who are seeking simplified market data administration and would like to offer Nasdaq Depth Information to subscribers that are using the Nasdaq Depth Information internally. The Nasdaq Enhanced Display Solution Fee is optional for firms providing a controlled display product containing Nasdaq Depth Information where the Distributor controls a display of Nasdaq Depth Information, but allows the subscriber to access an API or similar solution from that display product since these firms can choose to pay the data feed fees. The new Nasdaq Enhanced Display Solution Fee is designed to allow TotalView subscribers to redistribute data via a terminal without paying a higher fee for an attached API. As a result, it does not impact individual usage fees for TotalView or in any way increase the costs of any user of the TotalView data product. For subscribers wanting to use this same functionality for other products, they would be able to do so by paying the applicable TotalView rates.

2. *Statutory Basis*

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of Nasdaq data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or

[4] Subscribers redistributing Nasdaq Level 2 information under the proposed fee change will pay underlying Nasdaq TotalView or Nasdaq OpenView rates. A Subscriber redistributing Nasdaq Level 2 for Nasdaq-listed securities will pay the underlying Nasdaq TotalView rates and a customer redistributing Nasdaq Level 2 for NYSE, AMEX or regional listed securities will pay the underlying Nasdaq OpenView rates.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

Nasdaq believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. Nasdaq believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC* [sic], No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion* [sic], at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

NASDAQ believes that this proposal is in keeping with those principles by promoting increased transparency through the offering of a new pricing option for an Enhanced Display, which would not only result in Nasdaq offering lower fees for certain existing Distributors, but will allow new Distributors to deliver Enhanced Displays to new clients, thereby increasing transparency of the market. Additionally, the proposal provides for simplified market data administration and may be offered by Distributors to external subscribers that are using the Nasdaq Depth Information internally. Nasdaq notes also that this filing proposes to distribute no additional data elements and that the Enhanced Display Solution Fee is optional. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Nasdaq continues to create new pricing policies aimed at increasing transparency in the market and believes this is another step in that direction.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoaltion* [sic] court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. For the reasons discussed above, Nasdaq believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, Nasdaq believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users

expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse

to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. Nasdaq believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow. For example, as of July 2010, 92 of the top 100 broker-dealers by shares executed on Nasdaq consumed Level 2/NQDS and 80 of the top 100 broker-dealers consumed TotalView. During that month, the Level 2/NQDS-users were responsible for 94.44% of the orders entered into Nasdaq and TotalView users were responsible for 92.98%.

Competition among platforms has driven Nasdaq continually to improve its platform data offerings and to cater to customers' data needs. For example, Nasdaq has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. Nasdaq offers front end applications such as its ''Bookviewer'' to help customers utilize data. Nasdaq has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2/NQDS, because offering data in multiple formatting allows Nasdaq to better fit customer needs. Nasdaq offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. Nasdaq has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. Nasdaq has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, Nasdaq's fees for market data have remained flat. In fact, as a percent of total customer costs, Nasdaq data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to Nasdaq's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for depth information is significant and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. Nasdaq continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with Nasdaq or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this depth information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8]. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–005 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.

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

All submissions should refer to File Number SR–NASDAQ–2012–005. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–NASDAQ–2012–005, and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1232 Filed 1–20–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66163; File No. SR–CBOE–2012–007]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Decouple and Extend CBOE's Credit Option Margin Pilot Program to January 17, 2013

January 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2012, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to decouple and extend the duration of its Credit Option Margin Pilot Program through January 17, 2013. The text of the rule proposal 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, CBOE 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program (''Program'').[3] The Program became effective on a pilot basis and has run on a parallel track with FINRA Rule 4240, which is similarly operated on a pilot basis.[4] CBOE's Program is currently scheduled to expire on January 17, 2012.

In this current proposal, CBOE proposes to decouple its Program from the FINRA Rule 4240 margin pilot program. CBOE's decoupled Program will be substantially similar to the provisions of the FINRA Rule 4240 margin pilot program operated by FINRA.

CBOE understands that in connection with renewing its Rule 4240 margin pilot, FINRA will be revising its Rule 4240 by adding new Supplementary Material .02, which sets forth alternative tables to the existing tables that may be used by market participants to compute the required margin. CBOE similarly proposes to adopt alternative tables to the existing tables in its rules that may be used by Trading Permit Holders to compute the required margins. These new alternative tables are set forth in Rules 12.3(l)(3)(ii), 12.3(l)(3)(iv) and 12.4(l)(4)(ii). Also, a few minor changes are being made to Rule 12.3(l) to renumber paragraphs and to make other non-substantive changes.

Finally, CBOE proposes to extend its decoupled Program for an additional year to January 17, 2013.

CBOE notes for the Commission that there are currently Credit Options listed for trading on the Exchange that have open interest. As a result, CBOE believes that is in the public interest for the Program to continue uninterrupted.

In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, and because it

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) (order approving [SR–CBOE–2010–106]). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make CBOE's margin requirements for Credit Options consistent with FINRA Rule 4240, *Margin Requirements for Credit Default Swaps.* CBOE's Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

[4] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) (order approving [SR–CBOE–2010–106]).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

enhances fair competition among exchange markets.

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. 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–2012–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–007 and should be submitted on or before February 13, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, CBOE requested that the Commission approve the proposed rule change on an accelerated basis so that the Program will continue uninterrupted. After careful consideration, the Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] because the proposed rule change will further investor protection and the public interest by permitting the Program to continue uninterrupted since there are currently Credit Options listed for trading on the Exchange that have open interest. In addition, the Commission believes that the proposed alternative tables that may be used by market participants to compute the required margin will provide market participants with some flexibility in computing margin, while still permitting the continued use of the existing margin tables. Finally, the Commission notes that the proposed rule change is substantively similar in all material respects to the margin pilot program administered by FINRA under FINRA Rule 4240.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. This accelerated approval will allow the existing decoupled Program to continue without interruption and extend the benefits of a pilot program that the Commission has previously approved and extended. Moreover, the Commission notes that the proposed rule change is substantively similar in all material respects to the margin pilot program administered by FINRA under FINRA Rule 4240.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2012–007), be, and it hereby is, approved on an accelerated basis to January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1174 Filed 1–20–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 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).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

TapSlide, Inc., TTC Technology Corp. (f/k/a SmarTire Systems Inc.), TWL Corp., TXP Corp., Valentec Systems, Inc. (f/k/a Acorn Holdings Corp.), Verdant Technology Corp., and VPGI Corp.; Order of Suspension of Trading

January 19, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TapSlide, Inc. because it has not filed any periodic reports since the period ended July 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TTC Technology Corp. (f/k/a SmarTire Systems Inc.) because it has not filed any periodic reports since the period ended April 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TWL Corp. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TXP Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Valentec Systems, Inc. (f/k/a Acorn Holdings

Corp.) because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Verdant Technology Corp. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VPGI Corp. because it has not filed any periodic reports since it filed a registration statement on March 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 19, 2012, through 11:59 p.m. EST on February 1, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–1298 Filed 1–19–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7771]

Culturally Significant Objects Imported for Exhibition Determinations: ''Print/Out''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Print/Out,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about February 19, 2012, until on or about May 14, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 11, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–1262 Filed 1–20–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7772]

Culturally Significant Objects Imported for Exhibition Determinations: ''Renoir, Impressionism, and Full-Length Painting''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Renoir, Impressionism, and Full-Length Painting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about February 7, 2012, until on or about May 13, 2012, the subsequent exhibition of two of the objects at the Museum of Fine Arts, Boston, Massachusetts, from on or about May 28, 2012, until on or about September 2, 2012, in an exhibition titled ''Visiting Masterpieces: Renoir,'' and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 12, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–1265 Filed 1–20–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7759]

Overseas Security Advisory Council (OSAC) Meeting Notice

Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 22 and 23, 2012. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: (571) 345–2214.

Dated: January 12, 2012.

Scott P. Bultrowicz,

Director of the Diplomatic Security Service, U.S. Department of State.

[FR Doc. 2012–1260 Filed 1–20–12; 8:45 am]

BILLING CODE 4710–24–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on February 16, 2012, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 15, 2012, which will be noticed separately. Included in the list of projects scheduled for comment at the public hearing are both new projects and certain projects that were acted upon at the Commission's December 15, 2011, public hearing held in Wilkes-Barre, Pennsylvania. The Commission is affording this opportunity for additional comment due to the disruptive behavior of certain individuals that prevented many interested persons from being able to offer testimony at the December 15, 2011, public hearing. To give due consideration of any new oral or written comment received on such projects, the Commission will reconsider, at its March 2012, meeting, the actions taken on December 15, 2011. Details concerning the list of all projects that are the subject of the public hearing are contained in the **SUPPLEMENTARY INFORMATION** section of this notice. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. There will be no opportunity for further comment on these projects at the Commission's business meeting in March 2012, where the Commission is expected to take action thereon. The deadline for written comments on all such projects is February 27, 2012.

DATES: The public hearing will convene on February 16, 2012, at 2:30 p.m. Written comments on the listed projects are due on or before February 27, 2012.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; email: *srichardson@srbc.net.* Information concerning the applications for these projects is available at the SRBC Water Resource Portal at *www.srbc.net/wrp.* Materials and supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02%20Access%20to%20Records%20Policy%209-10-09.PDF.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Originally Considered at the December 15, 2011, Public Hearing

1. Project Sponsor: Anadarko E&P Company LP. Project Facility: Sproul State Forest—Council Run, Snow Shoe Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.715 mgd (30-day average) from Well PW–11.

2. Project Sponsor: Bioenergy International, LLC. Project Facility: Bionol Clearfield, LLC, Clearfield Borough, Clearfield County, Pa. Modification to conditions of the surface water withdrawal approval (Docket No. 20070904).

3. Project Sponsor: Borough of Ephrata. Project Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Modification to conditions of the groundwater withdrawal approval (Docket No. 20110902).

4. Project Sponsor and Facility: Carrizo (Marcellus), LLC (Mosquito Creek–2), Karthaus Township, Clearfield County, Pa. Application for surface water withdrawal of up to 2.160 mgd.

5. Project Sponsor and Facility: Central New York Oil and Gas Company, LLC (Susquehanna River), Wilmot Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.540 mgd.

6. Project Sponsor and Facility: Central New York Oil and Gas Company, LLC, Wilmot Township, Bradford County, Pa. Application for consumptive water use of up to 0.105 mgd.

7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—Babcock), Ulster Township, Bradford County, Pa. Application for surface water withdrawal of up to 3.000 mgd.

8. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—Elmglade), Wilmot Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.016 mgd.

9. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek—Sechrist), Canton Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.504 mgd.

10. Project Sponsor: Clark Trucking, LLC. Project Facility: Northeast Division (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.500 mgd.

11. Project Sponsor: Clark Trucking, LLC. Project Facility: Northeast Division (Muncy Creek), Muncy Creek Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.700 mgd.

12. Project Sponsor and Facility: Dunn Lake LLC (Dunn Pond), Ararat Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

13. Project Sponsor and Facility: EXCO Resources (PA), LLC (Muncy Creek—McClintock), Penn Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

14. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Greens Landing Aggregate Plant, Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

15. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Greens Landing Aggregate Plant, Athens Township, Bradford County, Pa. Application for consumptive water use of up to 0.249 mgd.

16. Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation, Hazleton City, Luzerne County, Pa. Modification to increase groundwater withdrawal by an additional 0.145 mgd, for a total of 0.200 mgd (30-day average) (Docket No. 20110307).

17. Project Sponsor and Facility: Keystone Clearwater Solutions, LLC (Babb Creek), Morris Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.950 mgd.

18. Project Sponsor and Facility: Stanley S. Karp Sr. (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.510 mgd.

19. Project Sponsor and Facility: Sugar Hollow Trout Park and Hatchery, Eaton Township, Wyoming County, Pa. Modification to project features and conditions of the groundwater withdrawal approval (Docket No. 20100913).

20. Project Sponsor and Facility: Sugar Hollow Water Services, LLC (Susquehanna River—Chellis), Eaton Township, Wyoming County, Pa.

Application for surface water withdrawal of up to 1.500 mgd.

21. Project Sponsor: The Municipal Authority of the Borough of Berlin. Project Facility: Berlin Borough Municipal Authority, Allegheny Township, Somerset County, Pa. Modification to conditions of the groundwater withdrawal approval (Docket No. 19980702).

22. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, Pa. Modification to increase the total groundwater system withdrawal limit from 0.523 mgd to 0.753 mgd (30-day average) (Docket No. 20070905).

23. Project Sponsor and Facility: Williams Production Appalachia, LLC (Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

24. Project Sponsor and Facility: Williams Production Appalachia, LLC (Snake Creek-2), Franklin Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

25. Project Sponsor and Facility: Williams Production Appalachia, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Commission-initiated modification to project features and conditions of the surface water withdrawal approval (Docket No. 20090303), making a correction and reducing the approved surface water withdrawal amount from 3.00 mgd to 1.00 mgd.

26. Project Sponsor and Facility: Williams Production Appalachia, LLC (Susquehanna River-2), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

Additional Project for Rescission Action

1. Project Sponsor and Facility: Texas Eastern Transmission LP (Susquehanna River) (Docket No. 20110314), East Donegal Township, Lancaster County, Pa.

Additional Projects

1. Project Sponsor and Facility: Anadarko E&P Company LP (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.340 mgd (peak day).

2. Project Sponsor and Facility: Aqua Infrastructure, LLC (West Branch Susquehanna River), Piatt Township, Lycoming County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

3. Project Sponsor and Facility: Aqua Resources, Inc. (Susquehanna River), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.900 mgd (peak day).

4. Project Sponsor and Facility: Black Bear Waters, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.400 mgd (peak day).

5. Project Sponsor and Facility: Blossburg Municipal Authority, Bloss Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.396 mgd (30-day average) from Route 15 Well.

6. Project Sponsor and Facility: Buck Ridge Stone, LLC (Salt Lick Creek), New Milford Township, Susquehanna County, Pa. Modification to increase surface water withdrawal by an additional 0.637 mgd, for a total of 0.720 mgd (peak day) (Docket No. 20100905).

7. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Susquehanna Depot Borough, Susquehanna County, Pa. Modification to increase surface water withdrawal by an additional 0.780 mgd, for a total of 1.500 mgd (peak day) (Docket No. 20080908).

8. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Borough, Susquehanna County, Pa. Modification to increase surface water withdrawal by an additional 1.280 mgd, for a total of 2.000 mgd (peak day) (Docket No. 20080905).

9. Project Sponsor and Facility: Carrizo (Marcellus), LLC (Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Modification to conditions of the surface water withdrawal approval (Docket No. 20110604).

10. Project Sponsor and Facility: Carrizo (Marcellus), LLC (Moshannon Creek), Decatur Township, Clearfield County, Pa. Application for surface water withdrawal of up to 2.590 mgd (peak day).

11. Project Sponsor and Facility: Carrizo (Marcellus), LLC (Unnamed Tributary of Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Modification to conditions of the surface water withdrawal approval (Docket No. 20110605).

12. Project Sponsor and Facility: Empire Kosher Poultry, Inc., Walker Township, Juniata County, Pa. Modification to increase total groundwater system withdrawal by an additional 0.499 mgd, for a total of 1.269 mgd (30-day average) (Docket No. 20030809).

13. Project Sponsor and Facility: EQT Production Company (Bennett Branch Power), Jay Township, Elk County, Pa. Application for surface water withdrawal of up to 2.500 mgd (peak day).

14. Project Sponsor and Facility: EQT Production Company (Wilson Creek), Duncan Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.740 mgd (peak day).

15. Project Sponsor: IBM Corporation. Project Facility: Endicott Facility, Village of Endicott, Broome County, N.Y. Modification to increase total groundwater system withdrawal by an additional 0.499 mgd, for a total of 1.509 mgd (30-day average) (Docket No. 20090329).

16. Project Sponsor and Facility: Jo Jo Oil Company, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

17. Project Sponsor and Facility: Keystone Landfill, Inc., Dunmore Borough, Lackawanna County, Pa. Modification to increase groundwater withdrawal by an additional 0.150 mgd, for a total of 0.160 mgd (30-day average) (Docket No. 20080611).

18. Project Sponsor and Facility: Keystone Landfill, Inc., Dunmore Borough, Lackawanna County, Pa. Modification to increase consumptive water use by an additional 0.260 mgd, for a total of up to 0.360 mgd (30-day average) (Docket No. 20080611).

19. Project Sponsor and Facility: Northwestern Lancaster County Authority, Penn Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.324 mgd (30-day average) from Well 2.

20. Project Sponsor and Facility: Northwestern Lancaster County Authority, Penn Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.000 mgd (30-day average) from Well 3.

21. Project Sponsor: Pine Creek Municipal Authority. Project Facility: Wastewater Treatment Plant, Pine Creek Township, Clinton County, Pa. Application for withdrawal of treated wastewater effluent of up to 0.999 mgd.

22. Project Sponsor and Facility: Roaring Spring Water—Division of Roaring Spring Blank Book (Roaring Spring), Roaring Spring Borough, Blair County, Pa. Application for surface water withdrawal of up to 0.302 mgd (peak day).

23. Project Sponsor and Facility: Roaring Spring Water—Division of

Roaring Spring Blank Book, Roaring Spring Borough, Blair County, Pa. Application for consumptive water use of up to 0.255 mgd (30-day average).

24. Project Sponsor and Facility: Southwestern Energy Production Company (Blockhouse Creek), Jackson Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

25. Project Sponsor and Facility: Southwestern Energy Production Company (East Branch Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

26. Project Sponsor and Facility: Southwestern Energy Production Company (Susquehanna River), Oakland Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

27. Project Sponsor and Facility: Southwestern Energy Production Company (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

28. Project Sponsor and Facility: Stanley S. Karp Sr. (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.510 mgd (peak day).

29. Project Sponsor and Facility: SWEPI LP (Cowanesque River—Egleston), Nelson Township, Tioga County, Pa. Modification to increase surface water withdrawal by an additional 0.267 mgd, for a total of 0.534 mgd (peak day) (Docket No. 20100604).

30. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for consumptive water use of up to 0.387 mgd (30-day average).

31. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for groundwater withdrawal of up to 0.172 mgd from Well 1, and a total system withdrawal limit of up to 0.391 mgd (30-day average).

32. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for groundwater withdrawal of up to 0.172 mgd from Well 2, and a total system withdrawal limit of up to 0.391 mgd (30-day average).

33. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for groundwater withdrawal of up to 0.172 mgd from Well 4, and a total system withdrawal limit of up to 0.391 mgd (30-day average).

34. Project Sponsor and Facility: Water Treatment Solutions, LLC (South Mountain Lake), Wood Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.499 mgd (peak day).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Ground rules for the hearing will be clearly stated prior to the hearing and disruptive behavior will not be tolerated. Ground rules will be posted on the Commission's Web site, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project listed above may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, *rcairo@srbc.net,* or Stephanie L. Richardson, Secretary to the Commission, *srichardson@srbc.net.* Comments mailed or electronically submitted must be received by the Commission on or before February 27, 2012, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806–808.

Dated: January 12, 2012.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2012–1185 Filed 1–20–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Universal Jet Aviation, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2012–1–11); Dockets DOT–OST–2011–0150 and DOT–OST–2011–0151.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Universal Jet Aviation, Inc., fit, willing, and able, and to provide interstate and foreign charter air transportation of persons, property and mail, using one large aircraft.

DATES: Persons wishing to file objections should do so no later than January 31, 2012.

ADDRESSES: Objections and answers to objections should be filed in Dockets DOT–OST–2011–0150 and DOT–OST–2011–0151 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine J. O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: January 13, 2012.

Robert A. Letteney,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2012–1201 Filed 1–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Radar Altimeter Equipment (For Air Carrier Aircraft)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to cancel Technical Standard Order (TSO)–C67, Airborne Radar Altimeter Equipment (For Air Carrier Aircraft).

SUMMARY: This notice announces the FAA's intent to cancel TSO–C67, Airborne Radar Altimeter Equipment (For Air Carrier Aircraft). The effect of the cancelled TSO will result in no new TSO–C67 design or production approvals. However, cancellation will not affect any current production of an existing TSO authorization (TSOA). Articles produced under an existing TSOA can still be installed per the existing airworthiness approvals, and all applications for new airworthiness approvals will still be processed.

DATES: Comments must be received on or before February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Sayadian, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–4652, fax

(202) 385–4651, email to: *albert.sayadian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the cancellation of the TSO–C67 by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

On November 15, 1960, the FAA published TSO–C67, Airborne Radar Altimeter Equipment (for air carrier aircraft). Since 1978, there have been no new applications for TSOA for TSO–C67. Our research indicates there are no authorized manufacturers currently manufacturing, advertising, or selling TSO–C67 compliant equipment. Therefore, given the obsolescence of the equipment, and the lack of industry interest in TSO–C67 product designs, we propose cancelling TSO–C67. Please note that TSO–C87, Airborne Low Range Radio Altimeter, is currently used for Radio Altimeter certification and is not affected by this action.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–1243 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Release of Airport Property: Fort Myers International Airport, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties 0.55 acres at the Fort Myers International Airport, Fort Myers, FL from the conditions, reservations, and restrictions as contained in all grant agreements between the FAA and the Lee County Port Authority. The release of property will allow the Lee County Port Authority, owner of Fort Myers International Airport, to dispose of the property for other than aeronautical purposes. The property is located north of Daniels Parkway and Chana Court, near the intersection of Chamberlin Parkway, in Fort Myers, Florida. The parcels are currently designated as non-aeronautical use. The property will be released of its federal obligations to transfer ownership to Lee County. The release of the airport properties will facilitate the construction of a new direct interchange access to the airport from Interstate 75. Lee County will also transfer ownership of 1.93 acres of property north of Daniels Parkway and Chana Court to be used for drainage for the airport access road. The airport parcels to be released have an appraised Fair Market Value of $41,622. The value of the parcel to be received is $5,000, and the value of the proposed airport access improvement is estimated to be $500,620.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Fort Myers International Airport and the FAA Airports District Office.

DATES: Comments are due on or before February 22, 2012.

ADDRESSES: Documents are available for review at the Fort Myers International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Bart Vernace,

Acting Manager, Orlando Airports District Office Southern Region.

[FR Doc. 2012–1064 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Release of Airport Property: Page Field, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties 1.52 acres at Page Field, Fort Myers, FL from the conditions, release certain properties from all terms, conditions, reservations and restrictions of a Quitclaim Deed agreement, dated June 4, 1947, between the subject airport and the Federal Aviation Administration. The release of property will allow the Lee County Port Authority, owner of Page Field, to dispose of the property for other than aeronautical purposes. The property is located in the southwest corner of airport property, north of South Road, in Lee County, Florida. The parcel is currently designated as non-aeronautical use. The property will be released of its federal obligations to sell the property at Fair Market Value to Lee County for municipal purposes. The appraised Fair Market Value of the parcel is $64,628.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Lee County Port Authority Offices at Fort Myers International Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: Comments are due on or before February 22, 2012.

ADDRESSES: Documents are available for review at the Lee County Port Authority Offices at Fort Myers International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

Bart Vernace,

Acting Manager, Orlando Airports District Office, Revision Date 11/22/00

[FR Doc. 2012–1053 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0104]

Emergency Temporary Closure of the I–64 Sherman-Minton Bridge Over the Ohio River Between Indiana and Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Notice.

SUMMARY: The Federal Highway Administration (FHWA) has approved the request from the Indiana Department of Transportation to continue temporary closure of the I–64 Sherman-Minton Bridge over the Ohio River between Indiana and Kentucky for an indefinite period of time due to safety considerations.

The approval is granted as an emergency deletion in accordance with section 658.11(e) due to the safety considerations discussed in this notice. The FHWA published a Notice and Request for Comment on October 27, 2011, at 76 FR 66775, seeking comments on the alternate routes selected by Indiana due to the deletion in accordance with section 658.11(e). No comments were received.

DATES: *Effective Date(s):* This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Nicholas, Truck Size and Weight Team, Office of Operations, (202) 366–2317, Mr. Bill Winne, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration; 1200 New Jersey Avenue SE., Washington, DC 20590, and Mr. Robert Tally, FHWA Division Administrator-Indiana Division, (317) 226–7476. Office hours for the FHWA are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may retrieve a copy of the Notice and Request for Comment, comments submitted to the docket, and a copy of this Final Notice through the Federal eRulemaking portal at: *www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982, as amended, designated in accordance with 23 CFR Part 658 and listed in Appendix A. In accordance with section 658.11, the FHWA may approve deletions or restrictions of the Interstate system or other National Network route based upon specified justification criteria in section 658.11(d)(2). Additionally, the FHWA has the authority to initiate the deletion of any route from the National Network, on an emergency basis, for safety considerations.

Pursuant to section 658.11 of title 23, Code of Federal Regulations, the Indiana Division of the FHWA announced the continued closure of the I–64 Sherman-Minton Bridge over the Ohio River between Indiana and Kentucky which the Indiana Governor closed on September 9, 2011, for safety considerations. The I–64 Sherman-Minton Bridge was undergoing a retrofit construction project when a crack was discovered in a critical load-carrying element of the bridge. After consultation with the Indiana Department of Transportation (INDOT), the Kentucky Transportation Cabinet (KYTC), and the FHWA, the Governor of Indiana closed the bridge immediately. The closure is for an indefinite period of time.

Notice and Request for Comment

The FHWA published a Notice and Request for Comment on October 27, 2011, at 76 FR 66775, seeking comments from the general public on this request. Specifically, the FHWA sought comments from the general public on the alternate routes selected by Indiana due to the closure. The comment period closed on November 28, 2011. No public comments were received.

The closure of the I–64 Sherman-Minton Bridge has affected traffic throughout the Louisville and Southern Indiana region. The closed bridge carried an Average Daily Traffic (ADT) count of 80,000 vehicles. The I–65 Kennedy Bridge has an ADT of 130,000 vehicles. The additional traffic on I–65 due to the Sherman-Minton Bridge closure has increased delays in crossing over the Ohio River. The 2010 FHWA Freight Performance Measures Initiatives report ranked the I–65 at I–64/I–71 interchange as the 19th worst out of 250 national freight congestion locations.

The Indiana and Kentucky State transportation officials have implemented official detours via the Interstate network. Traffic on eastbound I–64 in Indiana is detoured via I–265 eastbound and I–65 southbound. The traffic on I–65 southbound continues south to cross the Ohio River on the I–65 Kennedy Bridge to access downtown Louisville or rejoin I–64. Motorists also have the option to use the US 31 Clark Memorial Bridge, locally known as the Second Street Bridge, to cross the Ohio River into downtown Louisville. Traffic on westbound I–64 in Kentucky is detoured, via I–264 (or I–265) northbound to I–71 westbound to I–65 northbound. The traffic on I–65 northbound crosses the Ohio River on the Kennedy Bridge and continues north to I–265 westbound to rejoin I–64.

To reduce Interstate ramp merging delays, some ramps in the area have been closed. The KYTC closed the ramp from I–64 westbound to I–65 northbound. The INDOT closed the ramp from I–265 westbound to I–65 southbound. Additionally, INDOT has increased the number of lanes on key ramps to lessen bottlenecks on the ramp systems. The I–64 eastbound to I–265 eastbound ramp, the I–265 westbound to I–64 westbound ramp, and the I–265 eastbound to I–65 southbound ramp were widened from one to two lanes. To improve the peak period traffic flow into downtown Louisville during the morning, one lane of the four lane US–31 Clark Memorial Bridge is being used as a reversible lane. This measure allows for three lane openings into Louisville during the peak period in the morning.

The INDOT and the KYTC have coordinated plans with local governments on both sides of the Ohio River. The INDOT and the KYTC met with local transportation officials and police agencies immediately after the closure to prepare for the anticipated overflow of traffic from the official detour route on the Interstates to the local network. Such coordination is continuing as changes are being made to improve travel in the area. Police agencies in the region are also assisting.

The INDOT is warning motorists of the closure and delays via electronic message boards in Indianapolis, Evansville, and throughout southern Indiana. The KYTC is warning motorists of the closure and delays in Lexington and throughout southern Kentucky. The Illinois Department of Transportation is using such boards to notify drivers of the closure near the junction of I–57 and I–64. Additionally, the INDOT has contacted regional Traffic Management Centers in Cincinnati and St. Louis

regarding the I–64 closure. All Louisville area electronic message boards are being used to notify drivers of the closure, detours, and delay notices.

To assist in facilitating interstate commerce, the INDOT and the KYTC are coordinating with local trucking associations to minimize freight traffic disruptions. The Indiana Department of the Revenue and the INDOT have suspended all oversize permits routed on I–64 and are redirecting permitted loads to cross the Ohio River at the following locations: Evansville US 41 Bridge, Rockport US 231 Bridge, and Lawrenceburg I–275 Bridge.

The KYTC is currently directing oversize and overweight permitted loads to avoid all of the Louisville bridges and seek alternate routes. Interested parties may apply for such permits to cross the Ohio River at the following locations: Henderson US 41 Bridge, Paducah I–24 Bridge, Owensboro US 231 Bridge, and Northern KY I–275 Bridge.

Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15, which serve the affected area may use the alternate routes listed above. Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternate routes noted above and local signage to circulate around the restricted area.

The United States Coast Guard has not placed any restrictions on the Ohio River traffic around the area of the Sherman-Minton Bridge at this time.

After full consideration of the INDOT request discussed in this Final Notice and determining that the request meets the requirements of 23 CFR 658.11(e), the FHWA approves the deletion as proposed.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR Part 658.

Issued on: January 11, 2012.

Victor M. Mendez,

Administrator.

[FR Doc. 2012–1204 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Cancellation of Environmental Impact Statement in Orange County, NC

AGENCY: Federal Highway Administration (FHWA), North Carolina Department of Transportation (NCDOT).

ACTION: Cancellation of U–3808 (Elizabeth Brady Road Extension) EIS.

SUMMARY: In Vol. 70, No. 113/Tuesday, June 14, 2005/Notices, FHWA issued a Notice of Intent to advise the public that an Environmental Impact Statement (EIS) would be prepared for the proposed Elizabeth Brady Road Extension between US 70 Business and US 70 Bypass in Orange County, North Carolina. The project is now cancelled; therefore, no further project activities will occur.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence W. Coleman, Federal Highway Administration, North Carolina Division, 310 New Bern Avenue Suite 410, Raleigh, NC 27601–1418, Telephone, (919) 747–7014.

Issued on: January 17, 2012.

Clarence W. Coleman, Jr.,

Preconstruction and Environmental Team Leader, Raleigh, North Carolina.

[FR Doc. 2012–1192 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: February 2, 2012, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call (877) 820–7831, passcode, 908048 to participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: January 19, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–1369 Filed 1–19–12; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0027; Notice No. 3]

Northeast Corridor Safety Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Northeast Corridor Safety Committee Meeting.

SUMMARY: FRA announced the first meeting of the Northeast Corridor Safety Committee, a Federal Advisory Committee mandated by Section 212 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), on June 6, 2011 (See 76 FR 32391). This initial meeting was postponed until further notice (See 76 FR 34139) and is now rescheduled. The Committee is made up of stakeholders operating on the Northeast Corridor, and the purpose of the Committee is to provide annual recommendations to the Secretary of Transportation.

DATES: The meeting of the Northeast Corridor Safety Committee is scheduled to commence at 9 a.m. on Wednesday, February 22, 2012, and will adjourn by 3 p.m.

ADDRESSES: The Northeast Corridor Safety Committee meeting will be held at the National Housing Center, 1201 15th Street NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Woolverton, Northeast Corridor Safety Committee Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Jo Strang, Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6300.

SUPPLEMENTARY INFORMATION: The Northeast Corridor Safety Committee is mandated by a statutory provision in Section 212 of the PRIIA (codified at 49 U.S.C. 24905(f)). This Committee is chartered by the Secretary of Transportation and is an official Federal Advisory Committee established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. Title 5–Appendix.

Issued in Washington, DC on January 18, 2012.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012–1257 Filed 1–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 18, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 22, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or online at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

HR Connect/CareerConnector

OMB Number: 1505–0195.

Type of Review: Revision of a currently approved collection.

Title: Race and National Origin Identification.

Abstract: The Department's automated recruitment system, CareerConnector, is used to capture race and national origin information electronically from an applicant. The data will be used to help Treasury Bureaus identify barriers to selection and determine the demographics of the overall applicant pool.

Affected Public: Individuals and Households.

Estimated Total Annual Burden Hours: 41,667.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–1199 Filed 1–20–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will conduct a telephone conference call meeting from 11 a.m. to 12:30 p.m. on Monday, January 30, 2012, in Room GL20 of the Office of Rural Health, 1722 I Street NW., Washington, DC. The toll-free number for the meeting is 1 (800) 767–1750, and the access code is 44970#. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas and discusses ways to improve and enhance VA services for these Veterans.

The Committee will discuss the Committee's Annual Report to the Secretary and the meeting agenda and planning for the Committee's March 2012 meeting in Uvalde, Texas. The Committee will also receive an update from the Director, Office of Rural Health.

A 15-minute period will be reserved at 12:15 p.m. for public comments. Individuals who wish to address the Committee are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Judy Bowie, Designated Federal Officer, at *rural.health.inquiry@va.gov* or (202) 461–7100.

Dated: January 17, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–1173 Filed 1–20–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Monday,
No. 14 January 23, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 16
Injurious Wildlife Species; Listing Three Python Species and One Anaconda Species as Injurious Reptiles; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AV68

[FWS–R9–FHC–2008–0015; FXFR13360900000N5–123–FF09F14000]

Injurious Wildlife Species; Listing Three Python Species and One Anaconda Species as Injurious Reptiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is amending its regulations under the Lacey Act to add *Python molurus* (which includes Burmese python *Python molurus bivittatus* and Indian python *Python molurus molurus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), and yellow anaconda (*Eunectes notaeus*) to the list of injurious reptiles. By this action, the importation into the United States and interstate transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any live animal, gamete, viable egg, or hybrid of these four constrictor snakes is prohibited, except by permit for zoological, education, medical, or scientific purposes (in accordance with permit regulation) or by Federal agencies without a permit solely for their own use. The best available information indicates that this action is necessary to protect the interests of human beings, agriculture, wildlife, and wildlife resources from the purposeful or accidental introduction and subsequent establishment of these large nonnative constrictor snake populations into ecosystems of the United States.

DATES: This rule becomes effective on March 23, 2012.

ADDRESSES: This final rule and the associated final economic analysis, regulatory flexibility analysis, and environmental assessment are available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015; they are also available for public inspection, by appointment, during normal business hours, at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559; telephone (772) 562–3909 ext. 256; facsimile (772) 562–4288.

FOR FURTHER INFORMATION CONTACT: Supervisor, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559; telephone (772) 562–3909 ext. 256. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Action

On June 23, 2006, the Service received a petition from the South Florida Water Management District (District) requesting that Burmese pythons be considered for inclusion in the injurious wildlife regulations under the Lacey Act (18 U.S.C. 42, as amended; the Act). The District was concerned about the number of Burmese pythons (*Python molurus bivittatus*) found in Florida, particularly in Everglades National Park and on the District's widespread property in South Florida.

The Service published a notice of inquiry in the **Federal Register** (73 FR 5784; January 31, 2008) soliciting available biological, economic, and other information and data on the *Python, Boa,* and *Eunectes* genera for possible addition to the list of injurious wildlife under the Act and provided a 90-day public comment period. The Service received 1,528 comments during the public comment period that closed April 30, 2008. We reviewed all comments received for substantive issues and information regarding the injurious nature of species in the *Python, Boa,* and *Eunectes* genera. Of the 1,528 comments, 115 provided economic, ecological, and other data responsive to the 10 specific questions in the notice of inquiry. Most individuals submitting comments responded to the notice of inquiry as though it was a proposed rule to list constrictor snakes in the *Python, Boa,* and *Eunectes* genera as injurious under the Act. As a result, most comments expressed either opposition or support for listing the large constrictor snakes species and did not provide substantive information. We considered the information provided in the 115 applicable comments in the preparation of the draft environmental assessment, draft economic analysis, and the proposed rule.

On March 12, 2010, we published a proposed rule in the **Federal Register** (75 FR 11808) to list *Python molurus* (which includes Burmese and Indian pythons), reticulated python (*Broghammerus reticulatus* or *Python reticulatus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), boa constrictor (*Boa constrictor*), yellow anaconda (*Eunectes notaeus*), DeSchauensee's anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*) as injurious reptiles under the Act. The proposed rule established a 60-day comment period ending on May 11, 2010, and announced the availability of the draft economic analysis and the draft environmental assessment of the proposed rule. At the request of the public, we reopened the comment period for an additional 30 days ending on August 2, 2010 (75 FR 38069; July 1, 2010).

For the injurious wildlife evaluation in this final rule, in addition to information used for the proposed rule, we considered a wide range of information, including: (1) Substantive comments from two public comment periods for the proposed rule, (2) comments from five peer reviewers, and (3) new information acquired by the Service. From this information, we determined that four of the nine proposed species warrant listing as injurious at this time. In addition, we made improvements to the supplementary information to support and explain this decision.

We present a summary of the peer review comments and the public comments following the Lacey Act Evaluation Criteria section for four of the nine proposed species. The explanations in the sections on biology and evaluation of the four species will make many of the answers to the comments self-evident.

A major source of biological, management, and invasion risk information that we used for the proposed rule and this final rule was derived from the United States Geological Survey's (USGS) ''Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor'' hereafter referred to as ''Reed and Rodda 2009.'' This document was prepared at the request of the Service and the National Park Service; it can be viewed at the following Internet sites: *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015 and *http://www.fort.usgs.gov/Products/*

Publications/pub_abstract.asp?PubID=22691.

After full consideration of public comments and relevant factors, the Service is moving forward with publication of a final rule for the four species (Burmese python [including Indian python], Northern African python, Southern African python, and yellow anaconda. Five additional species (reticulated python, DeSchauensee's anaconda, green anaconda, Beni anaconda, and boa constrictor) are not being listed at this time and remain under consideration.

Background

Purpose of Listing as Injurious

The purpose of listing the Burmese python and its conspecifics (that is, belonging to the same species; hereafter referred to collectively as Burmese pythons unless otherwise noted), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), and yellow anaconda (*Eunectes notaeus*) (hereafter, collectively the four large constrictor snakes) as injurious wildlife is to prevent the accidental or intentional introduction of and the possible subsequent establishment of populations of these snakes in the wild in the United States.

Why the Four Species Were Selected for Consideration as Injurious Species

The Service has had the authority to list species as injurious under the Act since the 1940s. However, we have been criticized for not listing species before they became a problem (Fowler *et al.* 2007). The Burmese python–the subject of the original petition here–is one example of a species that may not have become so invasive in Florida if it had been listed before it had become established. With this final rule, we are attempting to prevent the further spread of the Burmese python and the specified other large constrictor snakes into other vulnerable areas of the United States.

Furthermore, we have the authority under the Act to list wild mammals, wild birds, reptiles, amphibians, fish, mollusks, and crustaceans that are injurious even if they are not currently in trade or known to exist in the United States. Thus, we can be proactive and not wait until a species is already established. As noted in the National Invasive Species Management Plan (National Invasive Species Council 2008), ''prevention is the first line of defense'' and ''can be the most cost-effective approach because once a species becomes widespread, controlling it may require significant and sustained expenditures.'' This is why we are listing one species that is not yet found in the United States but which has the requisite injurious traits.

Two of the four largest snakes in the world (with maximum lengths well exceeding 6 m [20 ft]) are the Burmese python and Northern African python; both are present in international trade (although imports of the Burmese python are higher than those of the Northern African python). The Burmese python and the Northern African python are established in south Florida. The Northern and Southern African pythons are closely related and have similar appearances. While the Northern African python is documented on import records as being imported and the Southern African python is not, we believe that some snakes reported as Northern African pythons may have actually been Southern, and that importers may want to switch to the next most similar species (Southern) if the Northern African python became listed as injurious. Thus, we evaluated the Southern African python on its own traits.

None of the four species is native to the United States. The Service is striving to prevent the introduction and establishment of all four species into new areas of the United States, due to concerns about the injurious effects of all four species, consistent with 18 U.S.C. 42.

All four species were evaluated and found to be injurious because there is a suitable climate match in parts of the United States to support them; they are likely to escape captivity; they are likely to prey on and compete with native species (including threatened and endangered species); it would be difficult to prevent, eradicate, or reduce large populations; and other factors that are explained in the sections Factors That Contribute to Injuriousness for Burmese Python and for the other three species. All four species were placed in the highest category of overall risk in Reed and Rodda's report (2009) evaluating the risks of the nine proposed species.

Need for the Final Rule

Under the Lacey Act, the Secretary of the Interior is authorized to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, and the offspring or eggs of any of the foregoing that are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession. We have determined that these four species of large constrictor snakes are injurious.

Thousands of Burmese pythons are now established in the Everglades and preying on many imperiled species and other wildlife. In addition, Northern African pythons are known to be established and breeding in South Florida. Yellow anacondas have also been reported in the wild in Florida. Burmese pythons, African pythons, and yellow anacondas have been reported in the wild in Puerto Rico. The Southern African python exhibits many of the same biological characteristics as the Northern African python that poses a risk of establishment and negative effects in the United States. The threat posed by the Burmese python and the three other large constrictor snakes will be explained in detail below under Factors That Contribute to Injuriousness for Burmese Python and each of the other species.

The USGS risk assessment used a method called ''climate matching'' to estimate those areas of the United States exhibiting climates similar to those experienced by the species in their respective native ranges (Reed and Rodda 2009). Considerable uncertainties exist about the native range limits of many of the giant constrictors, and a myriad of factors other than climate can influence whether a species could establish a population in a particular location. Nonetheless, this method represents the most accurate means to predict and anticipate where a nonnative species would be able to survive and establish populations within the United States.

Some interested parties, including other scientists such as Pyron *et al.* (2008), criticized Reed and Rodda's (2009) climate-matching method. In response, the authors published a clarification of how they used the model (Rodda *et al.* 2011). This paper more clearly explained Reed and Rodda's (2009) method and compared that method to Pyron *et al.'s* (2008) method for analyzing potential invasiveness for the Burmese python. We mention a few of Rodda *et al.'s* (2011) findings here:

- Pyron *et al.* (2008) incorrectly rejected many sites that are suitable for Burmese python invasion because their use of an excessive number of parameters actually ended up acting as filters. Using too many filters means that too many sites that are truly at risk of python introduction get filtered out.
- Additionally, in the new paper the authors eliminated four data points of blood pythons (a different species than Burmese pythons) that Pyron *et al.* (2008) used erroneously. This

significantly changed the area that Burmese pythons could invade, even using the MaxEnt computer program as Pyron *et al.* (2008) used it.

- Information theory suggests 10 parameters as the appropriate number to use in a study like this; the Pyron *et al.* (2008) model, however, used 60. With this number the parameters essentially become constraints, and skew the accuracy of the data so that the resulting model is not scientifically sound.
- The new USGS paper highlights the statistical dangers inherent in indiscriminately searching for correlations among a large number of possible parameters.
- Factors other than climate may limit a species' native distribution, including the existence of predators, diseases, and other local factors (such as major terrain barriers), which may not be present when a species is released in a new country. Therefore, the areas at risk of invasion often span a climate range greater than that extracted mechanically from the native range boundaries, as was done by Pyron *et al.* (2008).

The new paper does not change the previous USGS risk assessment, or the Service's interpretation of the USGS risk assessment, that Burmese pythons could find suitable climatic conditions in roughly a third of the United States.

While we acknowledge that uncertainty exists, these tools also serve as a useful predictor to identify vulnerable ecosystems at risk from injurious wildlife prior to the species actually becoming established (Lodge *et al.* 2006). Based on climate alone, many species of large constrictors are likely to be limited to the warmest areas of the United States, including parts of Florida, extreme south Texas, Hawaii, and insular territories. For a few species, larger areas of the southern United States appear to have suitable climatic conditions according to Reed and Rodda's (2009) climate-matching method.

The record cold temperatures in South Florida during January of 2010 produced the coldest 12-day period since at least 1940, according to the National Weather Service in Miami (NOAA 2010). A record low was set for 12 consecutive days with the temperature at or below 45 °F (7.2 °C) in West Palm Beach and Naples. Other minimum temperatures were broken in Moorehaven, tied in Fort Lauderdale, and the coldest in Miami since 1940. Despite the record cold, we know that many pythons survived in Florida. Large constrictors of several species continue to be present and to breed in south Florida. If thermoregulatory behavior or tolerance to cold is genetically based, we would expect large constrictor snake populations to persist, rebound, and possibly increase their genetic fitness and temperature tolerance as a result of natural selection pressures resulting from cold weather conditions such as those that occurred in south Florida in January 2010 (Dorcas *et al.* 2011).

Two studies by scientists from several research institutions, including the University of Florida, studied the effects of the 2010 winter cold weather on Burmese pythons. In Mazzotti *et al.* 2010, the authors noted that all populations of large-bodied pythons and boa constrictors inhabiting areas with cool winters, including northern populations of Burmese pythons in their native range, appeared to rely on use of refugia (safe locations) to escape winter temperatures. Pythons can seek such refugia as underground burrows, deep water in canals, or similar microhabitats to escape the cold temperatures. Those snakes that survived in Florida were apparently able to maintain body temperatures using microhabitat features of the landscape (Mazzotti *et al.* 2010).

Dorcas *et al.* (2011) studied the cold tolerance of Burmese pythons taken directly from the Everglades and placed in enclosures in South Carolina. While all of the snakes in this study died, the Service finds the risk to more temperate regions still of concern and a listing of this species as an injurious species is still warranted. The authors state that their results suggest that Burmese pythons from the population currently established in Florida are capable of withstanding conditions substantially cooler that those typically experienced in southern Florida, but may not be able to survive severe winters in regions as temperate as central South Carolina. They noted that some snakes currently inhabiting Florida could survive typical winters in areas of the southeastern United States more temperate than the region currently inhabited by pythons. The authors also noted that, if thermoregulatory behavior is heritable, selection for appropriate thermoregulatory behavior will be strong as pythons expand their range northward through the Florida peninsula. Consequently, future generations of pythons may be better equipped to invade temperate regions than those currently inhabiting southern Florida, particularly given the climate flexibility exhibited by the Burmese python in its native range (as analyzed through USGS' climate-matching predictions in the United States).

The Service and Everglades National Park asked USGS to assess the risk of invasion of nine species of snakes to assist in the Service's determination of injuriousness. Of the nine large constrictor snakes assessed by Reed and Rodda (2009) (Burmese python (which the authors refer to as Indian python), reticulated python, Northern African python, Southern African python, boa constrictor, yellow anaconda, DeSchauensee's anaconda, green anaconda, and Beni anaconda), five were shown to pose a high risk to the health of the ecosystem, including the Burmese python, Northern African python, Southern African python, yellow anaconda, and boa constrictor. The remaining four large constrictors—the reticulated python, green anaconda, Beni anaconda, and DeSchauensee's anaconda—were shown to pose a medium risk. None of the large constrictors that the USGS assessed was classified as low overall risk. A rating of low overall risk is considered as acceptable risk and the organism(s) of little concern (ANSTF 1996). See Lacey Act Evaluation Criteria below for an explanation how USGS assessed risk.

There is a high probability that the four large constrictors evaluated in this final rule, if released or escaped into the wild, will establish populations within their respective thermal and precipitation limits due to common life-history traits that make them successful invaders. These traits include being habitat generalists (able to utilize a wide variety of habitats) that are tolerant of urbanization and capacity to hunt and eat a wide range of size-appropriate vertebrates (reptiles, mammals, birds, amphibians, and fish; Reed and Rodda 2009). These large constrictors are highly adaptable to new environments and opportunistic in expanding their geographic range. Furthermore, since they are a novel (new to the system) predator at the top of the food chain, they can threaten the stability of native ecosystems by altering the ecosystem's form, function, and structure.

These four species are cryptically marked, which makes them difficult to detect in the field, complicating efforts to identify the range of populations or deplete populations through visual searching and removal of individuals. There are currently no tools available that would appear adequate for eradication of an established population of giant snakes once they have spread over a large area. Therefore, preventing the introduction into the United States and dispersal to new areas of these invasive species is of critical importance to the health and welfare of native wildlife.

For the purposes of this rule, a hybrid is any progeny from any cross involving parents of one or more species from the four constrictor snakes evaluated in this rule. Such progeny are likely to possess the same biological characteristics of the parent species that, through our analysis, leads us to find that they are injurious to humans and to wildlife and wildlife resources of the United States. Anderson and Stebbins (1954) stated that hybrids may have caused the rapid evolution of plants and animals under domestication, and that, in the presence of new or greatly disturbed habitats, some hybrid derivates would have been at a selective advantage. Facon *et al.* (2005) stated that invasions may bring into contact related taxa that have been isolated for a long time. Facon *et al.* (2005) also stated that hybridization between two invasive taxa has been documented, and that in all these cases, hybrids outcompeted their parental taxa. Ellstrand and Schierenbeck (2000) concluded that dispersal of organisms and habitat disturbance by humans both act to accelerate the process of hybridization and increase the opportunities for hybrid lineages to take hold.

Furthermore, snakes in general have been found to harbor ticks (such as the nonnative African tortoise tick) that cause heartwater disease (from the bacterium *Cowdria ruminantium*). Heartwater disease, although harmless to its reptilian hosts, can be fatal to livestock and related wild hoofed mammals, such as white-tailed deer. According to the USDA (March 2000), ''Heartwater disease is an acute, infectious disease of ruminants, including cattle, sheep, goats, white-tailed deer, and antelope. This disease has a 60 percent or greater mortality rate in livestock and a 90 percent or greater mortality rate in white-tailed deer.'' The ticks have been found in Florida. Agricultural agencies are trying to stop the spread of the ticks as a way of stopping the deadly disease. This rule will help to stop the spread into and around the United States of the ticks and other disease vectors that may be carried by these four species of nonnative constrictor snakes.

Listing Process

The regulations contained in 50 CFR part 16 implement the Act. Under the terms of the Act, the Secretary of the Interior is authorized to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, and the offspring or eggs of any of the foregoing that are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are found at 50 CFR 16.11–16.15.

In this final rule, we evaluated each of the four species of constrictor snake species individually and determined each species to be injurious. As of the effective date of the listing, therefore, their importation into, or transportation between, the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. This rule does not prohibit intrastate (within State boundaries) transport of the listed constrictor snake species. Any regulations pertaining to the transport or use of these species within a particular State will continue to be the responsibility of that State.

We used the Lacey Act Evaluation Criteria as a guide to evaluate whether a species does or does not qualify as injurious under the Act. The analysis developed using the criteria serves as a basis for the Service's regulatory decision regarding injurious wildlife species listings. A species does not have to be established, currently imported, or present in the wild in the United States for the Service to list it as injurious. The objective of such a listing would be to prevent that species' importation and likely establishment in the wild, thereby preventing injurious effects consistent with 18 U.S.C. 42.

Introduction Pathways for Large Constrictor Snakes

For the four constrictor snakes analyzed in this final rule, the primary pathway for the entry into the United States is the commercial pet trade. In the last few decades, most introductions of large constrictor snakes have been associated with the international trade in reptiles as pets. This trade includes wild-caught snakes, captive-bred, or captive-hatched juveniles from areas within their native countries. In their native ranges, a species may be captured in the wild and directly exported to the United States or other destination country, or wild-caught snakes may be kept in the country of origin to breed for export of subsequent generations. The main ports of entry for constrictor snakes are Miami, Los Angeles, Dallas-Ft. Worth, Baltimore, Detroit, Chicago, San Francisco, and Houston. From there, many of the live snakes are transported to animal dealers, who then transport the snakes to pet retailers. Large constrictor snakes are also bred in the United States and sold within the country.

A typical pathway of a large constrictor snake includes a pet store. Often, a person will purchase a hatchling snake (0.55 meters (m) [(22 inches (in)]) at a pet store or reptile show for as little as $25. The hatchling grows rapidly, even when fed conservatively, so a strong escape-proof enclosure is necessary. All snakes are adept at escaping, and constrictors are especially powerful when it comes to breaking out of cages. In captivity, they are most frequently fed pre-killed mice, rats, rabbits, and chickens. A tub of fresh water is needed for the snake to drink and soak in. As the snake grows too big for a tub in its enclosure, the snake will need to soak in increasingly larger containers, such as a bathtub. Under captive conditions, pythons will grow very fast. After 1 year, a python may be 2 m (7 ft) and after 5 years it could be 7.6 m (25 ft), depending on how often it is fed and other aspects of husbandry. A Burmese python, for example, will grow to more than 6 m (20 ft) long, weigh 90 kilograms (kg; 200 pounds (lbs)), live more than 25 years, and must be fed rabbits and the like.

Owning a giant snake is a difficult, long-term, and somewhat expensive responsibility. This is one reason that some snakes are released by their owners into the wild when they can no longer care for them. Other snakes may escape from inadequate enclosures. This is a common pathway for large constrictor snakes to enter the ecosystem (Fujisaki *et al.* 2009). The trade in constrictor snakes is international as well as domestic. From 1999 to 2010, more than 1.9 million live constrictor snakes of 12 species were imported into the United States (U.S. Fish and Wildlife Service 2011). Besides the species proposed for listing, these included ball python (*Python regius*), a blood python (*P. curtus*), another blood python (*P. brongersmai*), Borneo python (*P. breitensteini*), Timor python (*P. timoriensis*), and Angolan python (*P. anchietae*), none of which have been proposed for listing as injurious. From 1999 to 2010, approximately 96,000 large constrictor snakes of four species listed by this rule were imported into the United States (Service's final economic analysis 2012). Of all the constrictor snake species imported into the United States, the selection of nine constrictor snakes for evaluation as

injurious wildlife in the proposed rule was based on concern over the giant size of these particular snakes combined with their quantity in international trade or their potential for trade. The world's four largest species of snakes (Burmese python, Northern African python, reticulated python, and green anaconda) were selected, as well as similar and closely related species and the boa constrictor. These large constrictor snakes constitute a high risk of injuriousness in relation to those taxa with lower trade volumes; are massive, with maximum lengths exceeding 6 m (20 ft; except for boas up to 4 m (13 ft)); and have a high likelihood of establishment in various habitats of the United States. The Southern African python and yellow anaconda exhibit many of the same biological characteristics associated with a risk of establishment and negative effects in the United States.

The strongest factor influencing the chances of these large constrictors establishing in the wild are the number of release events and the numbers of individuals released (Bomford *et al.* 2009; 2005). A release event is when a nonnative species is either intentionally or unintentionally let loose in the wild. With a sufficient number of either intentional or unintentional release events, these species will likely become established in ecosystems with suitable conditions for survival and reproduction. For nonnative species to cause economic or ecological harm, they must first be transported out of their native range and released within a novel locality, establish a self-sustaining population in this new location, and expand their geographical range beyond the point of initial establishment. Releases of large numbers of individuals should enable the incipient (newly forming), nonnative population to withstand the inevitable decreases in survival or reproduction caused by the environment or demographic accidents. The release of many individuals into one location essentially functions as a source pool of immigrants, thus sustaining an incipient population even if the initial release was of insufficient size (or badly timed) to facilitate long-term establishment. Natural disasters, such as Hurricane Andrew in 1992, may have provided a mechanism for the accidental release of snakes, especially in light of large numbers of juvenile pythons frequently held by breeders and importers prior to sale and distribution (Willson *et al.* 2010).

Large or consistent releases of individuals into one location should enable the incipient population to overcome behavioral limitations or other problems associated with small population sizes. This is likely the case at Everglades National Park, where the core nonnative Burmese python population in Florida is now located. Therefore, allowing unregulated importation and interstate transport of these nonnative species will increase the risk of these new species becoming established through increased opportunities for release. The release of large constrictor snakes at different times and locations improves the chance of their successful establishment.

Released snakes may be single snakes that eventually find other snakes of the same or opposite sex. As a first step in understanding the ecology of these snakes and their potential impact on the Everglades ecosystem, the National Park Service began tracking pythons using radio-telemetry in the fall of 2005. The radio-tagged pythons have since demonstrated that female pythons make few long-distance movements throughout the year, while males roam widely in search of females during the breeding season (December–April). These results indicate an ability to move long distances in search of prey and mates. Pythons have a ''homing'' ability: after being released far from where they were captured, they returned long distances (up to 78 kilometers (km); 48 miles (mi)) in only a few months. These findings suggest that pythons searching for a suitable home range have the potential to colonize areas far from where they were released (Snow 2008; Harvey *et al.* 2008).

A second factor that is strongly and consistently associated with the success of an invasive species' establishment is a history of the species successfully establishing elsewhere outside its native range. Burmese pythons have already become established in the United States (see *Current Nonnative Occurrences* for Burmese python below). Therefore, we know that Burmese pythons can become established outside of their native range. The Northern African python is established west of Miami, Florida, in the vicinity known as the Bird Drive Basin Recharge Area (see *Current Nonnative Occurrences* for Northern African python below). Therefore, we know that Northern African pythons can also establish outside of their native range.

A third factor strongly associated with establishment success is having a good climate or habitat match between where the species naturally occurs and where it is introduced. Exotic (nonnative) reptiles and amphibians have a greater chance of establishing if they are introduced to an area with a climate that closely matches that of their original range. Species that have a large range over several climatic zones are predicted to be strong future invaders. The suitability of a country's climate for the establishment of a species can be quantified on a broad scale by measuring the climate match between that country and the geographic range of a species. Climate matching only sets the broad parameters for determining if an area is suitable for a nonnative large constrictor snake to establish. These three factors have all been consistently demonstrated to increase the chances of establishment by all invasive vertebrate taxa, including the four large constrictor snakes in this final rule (Bomford 2008, 2009).

However, as stated above, a species does not have to be established, currently imported, or present in the wild in the United States for the Service to determine that it is injurious. The objective of such a listing is to prevent that species' importation and likely establishment in the wild, thereby preventing injurious effects consistent with 18 U.S.C. 42.

Species Information

Burmese Python (Python molurus, Including Indian Python)

Native Range

Before laying out the native range of the Burmese python, we need to clarify our position on the taxonomy and nomenclature of this species. The taxonomy has been debated for almost 100 years, some scientists arguing for full species status for the Burmese python and some placing it as a subspecies of the Indian python. Reed and Rodda (2009) stated that, at times, *Python molurus* has been divided into subspecies recognizable primarily by color. Please see our response to Peer Review comment 3 (*PR3*) below for a detailed explanation of the taxonomic debate and our rationale for using *Python molurus* to include Burmese and Indian pythons. For the reasons stated in that response, we have no basis to assume that the ecological behavior of Burmese python *P. m. bivittatus* is independent of that of Indian python *P. m. molurus.* Furthermore, even a finding of ecological independence of *P. m. bivittatus* would not appreciably alter either the likelihood of its establishment in the United States or the cold tolerance of the whole species *Python molurus,* which was the taxon analyzed in the risk assessment (Reed and Rodda 2009; G. Rodda, pers. comm. 2009). Therefore, for the purposes of this rulemaking, the Service has determined that the Burmese python

should be able to survive in relatively similar conditions as the Indian python.

The nomenclature of *Python molurus* varies somewhat as well. The most widely used common name for the entire species *P. molurus* is Indian python, with *P. molurus bivittatus* routinely distinguished as the Burmese python. Other common names include Indian rock python, Asian rock python, and rock python. Because the pet trade is composed almost entirely of *P. m. bivittatus,* most popular references simply use Burmese python. In addition, the subspecies *Python m. molurus* is listed as endangered in its native lands under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) under the common name of Indian python. *Python m. molurus* is also listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) under Appendix I (which ''lists species that are the most endangered among CITES-listed animals and plants'') but uses no common name. Except for *Python m. molurus,* which, as just stated, is listed in Appendix I, all species and subspecies of *Pythonidae* are listed in CITES Appendix II (which ''lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled''). This rule lists all members of *Python molurus* as injurious under the Lacey Act. However, hereafter in this rule, we refer to the species as a whole under the common name of Burmese python (unless specifically noted as Indian), because of its occurrence in trade.

Python molurus ranges widely over southern and southeastern Asia (Reed and Rodda 2009). In its native range, the Burmese python occurs in virtually every habitat from lowland tropical rainforest (Indonesia and southeastern Asia) to thorn-scrub desert (Pakistan) and grasslands (Sumbawa, India) to warm, temperate, montane forests (Nepal and China) (Reed and Rodda 2009). This species inhabits an extraordinary range of climates, including both temperate and tropical, as well as both very wet and very dry environments (Reed and Rodda 2009).

Biology

The Burmese python's life history is fairly representative of large constrictors because juveniles are relatively small when they hatch, but nevertheless are independent from birth, grow rapidly, and mature in a few years. Mature males search for mates, and the females wait for males to find them during the mating season, then lay eggs to repeat the cycle. Female Burmese pythons do not need to copulate with males to fertilize their eggs. Instead, a female apparently can fertilize her own eggs with her own genetic material, though it is not known how often this occurs in the wild. Several studies of captives reported viable eggs from females kept for many years in isolation (Reed and Rodda 2009).

Like all pythons, the Burmese python is oviparous (lays eggs). In a sample of eight clutches discovered in southern Florida (one nest and seven gravid females), the average clutch size was 36 eggs, but pythons have been known to lay as many as 107 eggs in one clutch. Adult females from recent captures in Everglades National Park have been found to be carrying more than 85 eggs (Harvey *et al.* 2008).

The Burmese python is one of the largest snakes in the world, considering overall mass and length; it reaches lengths of up to 7 m (23 ft) and weights of over 90 kg (almost 200 lbs). Hatchlings range in length from 50 to 80 centimeters (cm) (19 to 31 inches (in)) and can more than double in size within the first year (Harvey *et al.* 2008). As with all snakes, pythons grow throughout their lives (Reed and Rodda 2009). Reed and Rodda (2009) cite Bowler (1977) for two records of captive Burmese pythons living more than 28 years (up to 34 years, 2 months for one snake that was already an adult when acquired).

Like all of the large constrictors, Burmese pythons are extremely cryptic in coloration. They are silent hunters that lie in wait along pathways used by their prey and then ambush them; they kill by wrapping their muscular bodies around their victims, squeezing tighter as the prey exhales until the victims suffocate. The snakes blend into their surroundings so well that observers have released marked snakes for research purposes and lost sight of them 5 feet away (A. Roybal, pers. comm. 2010).

With only a few reported exceptions, Burmese pythons eat a wide variety of terrestrial vertebrates (lizards, frogs, crocodilians, snakes, birds, and mammals). All constrictor snake species (especially the smaller-sized individuals) are capable of climbing trees to access roosting birds and bats. Many birds nest or feed on the ground, and these are easy prey for constrictor snakes. Special attention has been paid to the large maximum size of prey taken from python stomachs, both in their native range in Asia and in the United States. The most well-known large prey items include alligators, antelopes, dogs, deer, jackals, goats, porcupines, wild boars, pangolins, bobcats, pea fowl, frigate birds, great blue herons, langurs, and flying foxes; a leopard has even been reported as prey (Reed and Rodda 2009). To accommodate the large size of prey, Burmese pythons have the ability to grow stomach tissue quickly to digest a large meal (Reed and Rodda 2009). The methods of predation used by the Burmese python (whether sit-and-wait or actively hunting, or whether diurnal or nocturnal), as well as the other three species of large constrictor snakes in this final rule, work as well in their native ranges as in the United States.

Ectoparasites (including ticks of the genus *Amblyomma)* were collected from wild-caught, free-ranging exotic reptiles examined in Florida from 2003 to 2008 (Corn *et al.* 2011). This was the first report of collections of neotropical ticks from wild-caught Burmese pythons. From limited wild-caught, free-ranging exotic reptiles in Florida (including ball and Burmese pythons), ticks and mites were native to North America, Latin America, and Africa from reptiles native to Asia, Africa, and Central and South America. This study suggests the diversity of reptile ectoparasites introduced and established in Florida and the new host-parasite relationships that have developed among exotic and native ectoparasites and established exotic reptiles. Several studies (Burridge *et al.* 2000, Kenny *et al.* 2004, Reeves *et al.* 2006) have shown disease agents in the ticks that travel internationally on reptiles, which may serve in the introduction of disease agents that could impact the health of local wildlife, domestic animals, and humans (Corn *et al.* 2011).

Northern African Python (Python sebae)

Native Range

Python sebae and *Python natalensis* are closely related, large-bodied pythons of similar appearance found in sub-Saharan Africa (Reed and Rodda 2009). The most common English name for this species complex has been African rock python. After *P. sebae* was split from *P. natalensis,* some authors added ''Northern'' or ''Southern'' as a prefix to this common name. Reed and Rodda (2009) adopted Broadley's (1999) recommendations and refer to these snakes as the Northern and Southern African pythons; hereafter, we refer to them as Northern and Southern African pythons, or occasionally as African pythons or African rock pythons.

Northern African pythons range from the coasts of Kenya and Tanzania across much of central Africa to Mali and Mauritania, as well as north to Ethiopia and perhaps Eritrea; in arid zones, their range is apparently limited to the

vicinity of permanent water (Reed and Rodda 2009). In Nigeria, Northern African pythons are reported from suburban, forest, pond and stream, and swamp habitats, including extensive use of Nigerian mangrove habitats. In the arid northern parts of its range, Northern African pythons appear to be limited to wetlands, including the headwaters of the Nile, isolated wetlands in the Sahel of Mauritania and Senegal, and the Shabelle and Jubba Rivers of Somalia (Reed and Rodda 2009). The Northern African python inhabits regions with some of the highest mean monthly air temperatures identified for any of the large constrictors, with means of greater than 35 °C (95 °F) in arid northern localities (Reed and Rodda 2009).

Biology

Northern African pythons are primarily ambush foragers, lying in wait for prey in burrows, along animal trails, and in water. Northern African pythons are oviparous. Branch (1988) reports that an ''average'' female of 3 to 4 m (10 to 13 ft) total length would be expected to lay 30 to 40 eggs, while others report an average clutch of 46 eggs, individual clutches from 20 to ''about 100,'' and clutch size increasing correspondingly in relation to the body length of the female (Pope 1961). In captivity, Northern African pythons have lived for 27 years (Snider and Bowler 1992). As with most of the large constrictors, adult African pythons primarily eat endothermic (warm-blooded) prey (mammals and birds) from a wide variety of taxa. African pythons have consumed such animals as goats, dogs, and domestic turkeys.

Southern African Python (Python natalensis)

Native Range

The Southern African python is found from Kenya southwest to Angola and south through parts of Namibia and much of eastern South Africa. Distribution of the species overlaps somewhat with Northern African pythons, although the southern species tends to inhabit higher elevations in regions where both species occur (Reed and Rodda 2009).

Biology

Python sebae and *Python natalensis* are closely related, large-bodied pythons of similar appearance. In fact, taxonomists have lumped and split the species together several times since *Python natalensis* was described (Reed and Rodda 2009); see ''*Native Range''* section above under ''Northern African Python (*Python sebae*)'' for further explanation of the nomenclature.

Little is known about Southern African pythons, although we know that they are oviparous. As with most of the large constrictors, adult African pythons primarily eat endothermic prey from a wide variety of taxa. The Southern African pythons consume a variety of prey types that includes those listed for Northern African pythons.

Yellow Anaconda (Eunectes notaeus)

Native Range

The yellow anaconda (*Eunectes notaeus*) has a larger distribution in subtropical and temperate areas of South America than the DeSchauensee's anaconda and has received more scientific attention. The yellow anaconda appears to be restricted to swampy, seasonally flooded, or riverine habitats throughout its range. The primarily nocturnal anaconda species tends to spend most of its life in or around water. The yellow anaconda exhibits a fairly temperate climate range, including localities with cold-season monthly mean temperatures around 10 °C (50 °F) and no localities with monthly means exceeding 30 °C (86 °F) in the warm season (Reed and Rodda 2009).

Biology

The yellow anaconda bears live young (ovoviviparous). The recorded number of yellow anaconda offspring usually range from 10 to 37, with a known maximum of 56. In captivity, yellow anacondas have lived for more than 20 years. These anacondas are considerably smaller than the closely related green anaconda. Female yellow anacondas from Argentina measured a maximum length of 3.8 m (12.5 ft) and maximum weight of 29 kg (69.9 lbs); males reached 2.93 m (9.6 ft) and 10.5 kg (23.1 lbs) (Reed and Rodda 2009). The largest yellow anacondas found in the wild were about 4 m (13.1 ft). They have been reported to exceed those measurements in captivity.

Yellow anacondas appear to be generalist predators (able to prey on a wide variety of vertebrates). The anacondas in general, including this species, exhibit among the broadest diet range of any snake, including ectotherms (cold-blooded animals: lizards, crocodilians, turtles, snakes, fish) and endotherms (birds, mammals).

Summary of the Presence of the Four Constrictor Snakes in the United States

Of the four constrictor snake species that we are listing as injurious, three have been reported in the wild in the United States and two have been confirmed as reproducing in the wild in the United States (see *Current Nonnative Occurrences* below); three have been imported commercially into the United States during the period 1999 to 2010 (Table 1). Species ''reported in the wild'' are ones that have been found in the wild but without proof to date that they have reproduced in the wild. The greatest opportunity for preventing a species from becoming injurious is to stop a species from entering the wild; the second greatest opportunity is before a species becomes established in the wild (reported but not reproducing); and the smallest opportunity is when a species has become established (reproducing in the wild).

TABLE 1—FOUR SPECIES OF LARGE CONSTRICTOR SNAKES AND WHETHER THEY HAVE BEEN REPORTED IN THE WILD IN THE UNITED STATES, ARE KNOWN TO BE REPRODUCING IN THE WILD IN THE UNITED STATES, OR HAVE BEEN IMPORTED FOR TRADE (1999 TO 2010)

Species	Reported in the wild in U.S.?	Reproducing in the wild in U.S.?	Imported into U.S. for trade?*
Burmese python	Yes	Yes	Yes.
Northern African python	Yes	Yes***	Yes.
Southern African python	No	No	Unknown.**
Yellow anaconda	Yes	No	Yes.

* Data from Law Enforcement Management Information System (LEMIS; USFWS 2011).

** It is possible that this species has been imported into the United States incorrectly identified as one of the other species listed by this rule; however none have been reported.

*** Reed *et al.* 2010.

Lacey Act Evaluation Criteria

We use the criteria below to evaluate whether a species does or does not qualify as injurious under the Lacey Act, 18 U.S.C. 42. The analysis that is developed using these criteria serves as a general basis for the Service's regulatory decision regarding injurious wildlife species listings (not just for the four snake species being listed by this final rule). Biologists within the Service who are knowledgeable about a species being evaluated assess both the factors that contribute to and the factors that reduce the likelihood of injuriousness.

(1) Factors that contribute to being considered injurious:

- The likelihood of release or escape;
- Potential to survive, become established, and spread;
- Impacts on wildlife resources or ecosystems through hybridization and competition for food and habitats, habitat degradation and destruction, predation, and pathogen transfer;
- Impact to threatened and endangered species and their habitats;
- Impacts to human beings, forestry, horticulture, and agriculture; and
- Wildlife or habitat damages that may occur from control measures.

(2) Factors that reduce the likelihood of the species being considered as injurious:

- Ability to prevent escape and establishment;
- Potential to eradicate or manage established populations (for example, making organisms sterile);
- Ability to rehabilitate disturbed ecosystems;
- Ability to prevent or control the spread of pathogens or parasites; and
- Any potential ecological benefits to introduction.

To obtain some of the information for the above criteria, we referred to Reed and Rodda (2009). Reed and Rodda (2009) developed the Organism Risk Potential scores for each species using a widely utilized risk assessment procedure that was published by the Aquatic Nuisance Species Task Force, called ''Generic nonindigenous aquatic organisms risk analysis review process (for estimating risk associated with the introduction of nonindigenous aquatic organisms and how to manage that risk)'' (ANSTF 1996). The Aquatic Nuisance Species Task Force was created under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA). Congress enacted NANPCA to provide a way for government agencies to develop a national program to reduce the risk of unintentional introductions, ensure prompt detection and response, and control established species.

The ANSTF (1996) procedure incorporates four factors associated with probability of establishment and three factors associated with consequences of establishment, with the combination of these factors resulting in an overall Organism Risk Potential (ORP) for each species. For the four constrictor snakes, the risk of establishment was high.

For the four constrictor snakes, the consequences of establishment range from medium (yellow anaconda) to high (Burmese python, Northern African python, and Southern African python). The overall ORP, which is derived from an algorithm of both probability of establishment and consequences of establishment, was found to be high for all four species.

Certainties were highly variable within each of the seven elements or factors of the risk assessment mentioned above, varying from very uncertain to very certain. In general, the highest certainties were associated with species unequivocally established in Florida (such as Burmese python and Northern African python) because of enhanced ecological information on these species from studies in both their native range and in Florida. The way in which these subscores are obtained and combined is set forth in an algorithm created by the ANSTF (Table 2).

TABLE 2—THE ALGORITHM THAT THE ANSTF (1996) DEFINED FOR COMBINING THE TWO PRIMARY SUBSCORES

[Reed and Rodda 2009].

Probability of establishment	Consequences of establishment	Organism Risk Potential (ORP)
High	High	High.
Medium	High	High.
Low	High	Medium.
High	Medium	High.
Medium	Medium	Medium.
Low	Medium	Medium.
High	Low	Medium.
Medium	Low	Medium.
Low	Low	Low.

Similar algorithms are used for deriving the primary subscores from the secondary subscores. However, the scores are fundamentally qualitative, in the sense that there is no unequivocal threshold that is given in advance to determine when a given risk passes from being low to medium, and so forth. Therefore, we viewed the process as one of providing relative ranks for each species. Thus, a high ORP score indicates that such a species would likely entail greater consequences or greater probability of establishment than would a species whose ORP was medium or low (that is, high > medium > low). High-risk species include the four species being designated as injurious by this rulemaking: Burmese pythons, Northern and Southern African pythons, and yellow anacondas. High-risk species, if established in this country, would put larger portions of the U.S. mainland and insular territories at risk, constitute a greater ecological threat, or are more common in trade and commerce.

Factors That Contribute to Injuriousness for Burmese Python

Current Nonnative Occurrences

The Burmese python has been captured in many areas in Florida (see Figure 5 in the final environmental assessment). In South Florida, more than 1,300 live and dead Burmese pythons, including gravid females, have been removed from in and around Everglades National Park in the last 11 years by authorized agents, park staff, and park partners, indicating that they are already established (National Park Service 2010). In the Commonwealth of Puerto Rico, the Burmese python has been collected or reported (eight individuals collected, including a 3-m (10-ft) albino) from the municipality of Adjuntas, the northern region of the island (Arecibo), the eastern region of the island (Humacao), and southeastern region of the island (Guayama) (A. Atienza, pers. comm. 2010; J. Saliva, pers. comm. 2009; USGS 2007).

Newspaper accounts from 1980 to 2010 report that numerous Burmese pythons have escaped captivity or were spotted in the wild in the following States (HSUS 2009; 2010): Arkansas, California, Georgia, Idaho, Illinois, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, and Virginia. This illustrates that the potential for release or escape is not confined to Florida and Puerto Rico but could occur in many States. See the section ''Introduction Pathways for Large Constrictor Snakes'' for the explanation of how release events are relevant to the potential establishment of Burmese pythons.

Potential Introduction and Spread

The likelihood of release or escape from captivity of Burmese python is high as evidenced by the number of reports from Florida and Puerto Rico (National Park Service 2010; J. Saliva, pers. comm. 2009; HSUS 2010; USGS 2007). When Burmese pythons escape captivity or are released into the wild, many have survived and are likely to

continue to survive and become established with or without reproducing. For example, in the past 11 years, more than 1,300 Burmese pythons have been removed from just Everglades National Park and vicinity (National Park Service 2010), and others have been captured from other natural areas on the west side of South Florida, the Florida Keys (Higgins, pers. comm. 2009), and farther north on the peninsula, including Sarasota and Indian River County (M. Lowman, pers. comm. 2009; B. Dangerfield, pers. comm. 2010).

Moreover, released Burmese pythons would likely disperse to areas of the United States with a suitable climate. See ''Introduction Pathways for Large Constrictor Snakes'' section above for the explanation of how the snakes would spread. These areas were determined in the risk assessment (Reed and Rodda 2009) for all four constrictor snakes by comparing the type of climate the species inhabited in their native ranges to areas of similar climate in the United States (climate matching). Due to the wide rainfall tolerance and extensive semi-temperate range of Burmese python, large areas of the southern United States mainland appear to have a climate suitable for survival of this species. Areas of the United States that are climatically matched at present include along the coasts and across the south from Delaware to Oregon, as well as most of California, Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South and North Carolina. In addition to these areas of the U.S. mainland, the territories of Guam, Northern Mariana Islands, American Samoa, Virgin Islands, and Puerto Rico appear to have suitable climates. Areas of the State of Hawaii with elevations under about 2,500 m (8,202 ft) would also appear to be climatically suitable. Burmese pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors: Rapid growth to a large size with production of many offspring; ability to survive under a range of habitat types and conditions (habitat generalist); behaviors that allow escape from freezing temperatures; ability to adapt to live in urban and suburban areas; ability to disperse long distances (Harvey *et al.* 2008); and tendency to be well-concealed ambush predators.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

As discussed above under *Biology,* the Burmese python grows to lengths greater than 7 m (23 ft) and can weigh up to 90 kg (200 lbs). This is longer than any native terrestrial predator (including bears) in the United States and its territories and heavier than most native predators (including black bears). Burmese pythons can be so large that they can prey on alligators, which are among the largest native predators in the Southeast (Harvey *et al.* 2008, Reed and Rodda 2009, National Geographic 2006).

In comparison with the Burmese python, the largest snake native to the continental United States is much smaller. The largest native snake is the indigo snake (*Drymarchon corais*), attaining a maximum length of about 2.5 m (8 ft) (Monroe and Monroe 1968). The endangered Puerto Rican boa's (*Epicrates inornatus*) maximum size is approximately 2 m (6.5 ft) (U.S. Fish and Wildlife Service 1986). A subspecies of the indigo snake is the eastern indigo snake (*D. corais couperi*), which grows to a similar maximum length. The eastern indigo snake inhabits Georgia and Florida and is listed as federally threatened by the Service.

Unlike prey species in the Burmese python's native range, none of our native species has evolved defenses to avoid predation by such a large snake. Thus, native wildlife anywhere in the United States would be very likely to fall prey to Burmese pythons (or any of the other six constrictor snakes). At all life stages, Burmese pythons can and will compete for food with native species; in other words, baby pythons will eat small prey, and the size of their prey will increase as they grow. Based on an analysis of their diets in Florida, Burmese pythons, once they are introduced and established, may outcompete native predators (such as the federally listed Florida panther, eastern indigo snake, native boas, hawks), feeding on the same prey and thereby reducing the supply of prey for the native predators.

Burmese pythons are generalist predators that consume a wide variety of mammal and bird species, as well as reptiles, amphibians, and occasionally fish. This constrictor can easily adapt to prey on novel wildlife (species that they are not familiar with), and they need no special adaptations to hunt, capture, and consume them. Pythons in Florida have consumed prey as large as white-tailed deer and adult American alligators. Three federally endangered Key Largo woodrats (*Neotoma floridana smalli*) were eaten by a Burmese python in the wild in the Florida Keys in 2007. The extremely small number of remaining Key Largo woodrats suggests that the current status of the species is precarious (U.S. Fish and Wildlife Service 2008); this means that a new predator that has been confirmed to prey on the endangered woodrats is a serious threat to the continued existence of the species. Dove *et al.* (2011) found 25 species of birds representing 9 avian orders from remains in digestive tracts of 85 Burmese pythons (*Python molurus bivittatus*) collected in Everglades National Park; this included the federally endangered wood stork and 4 species of State concern.

The United States, particularly the Southeast, has a diverse faunal community that is potentially vulnerable to predation by the Burmese python. Juveniles of these large constrictors will climb trees and rocks to remove prey from bird nests and capture perching or sleeping birds. Most of the South has suitable climate and habitat for Burmese pythons. The greatest biological impact of an introduced predator, such as the Burmese python, is the likely loss of imperiled native species. Based on the food habits and habitat preferences of the Burmese python in its native range, the species is likely to invade the habitat, prey on, and further threaten most of the federally threatened or endangered fauna in climate-suitable areas of the United States.

Burmese pythons are also likely to decrease the populations of numerous potential candidates for Federal protection by hunting and eating them. Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act, but for which development of a proposed listing regulation is precluded by other higher priority listing activities.

The final environmental assessment includes lists of species that are federally or State threatened or endangered in some climate-suitable States and territories: Florida, Hawaii, Guam, Puerto Rico, and the Virgin Islands. Other States have federally or State threatened or endangered species that would be suitable prey for large constrictor snakes, including the Burmese python. These lists include only the species of the sizes and types that would be expected to be directly affected by predation by Burmese pythons and the other large constrictors. For example, plants and marine species are excluded. In Florida, 14 bird species, 15 mammals, and 2 reptiles that are threatened or endangered could be preyed upon by Burmese pythons or be outcompeted by them for prey. Hawaii has 34 bird species and 1 mammal that

are threatened or endangered that would be at risk of predation. Puerto Rico has eight bird species and eight reptile species that are threatened or endangered that would be at risk of predation. The Virgin Islands has one bird species and three reptiles that are threatened or endangered that would be at risk of predation. Guam has six bird species and two mammals that are threatened or endangered that would be at risk of predation.

Due to the wide rainfall tolerance and extensive semi-temperate native range of *P. molurus,* large areas of the southern U.S. mainland appear to have a climate suitable for survival of this species. Please refer to the Final Environmental Assessment for the climate suitability maps for each large constrictor snake species. U.S. areas climatically matched at present ranged up the east and west coasts and across the interior south from Virginia to California, and throughout most of California, Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South and North Carolina. In addition to the mapped areas of the United States mainland, the territories of Guam, Northern Mariana Islands, American Samoa, Virgin Islands, and Puerto Rico appear to have suitable climate. Areas of the State of Hawaii with elevations under about 2,500 m (8,202 ft) also appear to be climatically suitable. While we did not itemize the federally threatened and endangered species from California, Texas, and other States, there are likely several hundred species in those and other States that would be at risk from Burmese pythons. According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from all of Florida, most of Hawaii, and all of Puerto Rico would be at risk from the establishment of Burmese pythons. In addition, Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Burmese pythons, and these also have federally threatened and endangered species that would be at risk if Burmese pythons became established.

The likelihood and magnitude of the effect on threatened and endangered species is high. Burmese pythons are thus highly likely to negatively affect threatened and endangered birds and mammals, as well as unlisted native species. Consistent with the language of the Lacey Act authorizing the listing of ''species'' and with prior administrative practice of listing only species or higher taxonomic units, we evaluated the species *Python molurus* as a whole, instead of evaluating the subspecies *Python molurus bivittatus* (Burmese python), which was the taxon originally petitioned for listing by the South Florida Water Management District. We determined that the species should be listed. As stated above under ''*Native Range,''* the cold tolerance for both subspecies is similar, so the climate match (one of the evaluation criteria) determined in Reed and Rodda (2009) (also G. Rodda, pers. comm. 2009) is as applicable to each subspecies as it is to the species as a whole.

Potential Impacts to Humans

The introduction or establishment of Burmese pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, educational, and economic values currently provided by native wildlife and healthy ecosystems.

Human fatalities from nonvenomous snakes in the wild are rare, probably only a few per year worldwide (Reed and Rodda 2009). Although attacks on people by Burmese pythons are improbable, they are possible given the large size that some individual snakes can reach. However, the only human deaths in the United States from Burmese pythons that we are aware of were from captive snakes (in Colorado, Florida, Missouri, and Pennsylvania; HSUS 2010).

Ectoparasites (including ticks in the genus *Amblyomma*) were collected from wild-caught, free-ranging exotic reptiles examined in Florida from 2003 to 2008 (Corn *et al.* 2011). This was the first report of collections of Neotropical ticks from wild-caught Burmese pythons, *Python molurus bivittatus.* The only known vectors capable of transmitting *Cowdria ruminantium* (which causes heartwater disease) are 13 species of ticks in the genus *Amblyomma* (Deem 1998). Heartwater disease is a devastating disease of livestock (including cattle, sheep, and goats) in Africa (Deem 1998). From limited wild-caught, free-ranging exotic reptiles in Florida (including ball and Burmese pythons), ticks and mites were native to North America, Latin America, and Africa from reptiles native to Asia, Africa, and Central and South America. These reports suggest the diversity of reptile ectoparasites introduced and established in Florida and the new host-parasite relationships that have developed among exotic and native ectoparasites and established exotic reptiles. Several studies (Burridge *et al.* 2000, Kenny *et al.* 2004, Reeves *et al.* 2006) have shown disease agents in the ticks that travel internationally on reptiles, which may serve in the introduction of disease agents that could impact the health of local wildlife, domestic animals, and humans (Corn *et al.* 2011). A potentially devastating impact to the nation's agriculture could occur if the deadly cattle disease heartwater or some other tick-borne disease were to become established in the United States and be transmissible through reptile ticks (Reed and Rodda 2009). African tick species that use pythons as hosts may be vectors of heartwater, and these ticks have been observed to transfer to other hosts, including other giant constrictors, other reptiles, and dogs. Because multiple python species are held captive together in the commercial trade, such transmission provides opportunities to occur prior to retail sales (Reed and Rodda 2009).

Factors That Reduce or Remove Injuriousness for Burmese Python

Control

No effective tools are currently available to detect and remove large constrictor populations. Traps with drift fences or barriers are the best option, but their use on a large scale is prohibitively expensive, largely because of the labor cost of baiting, checking, and maintaining the traps daily. Additionally, some areas cannot be effectively trapped due to the expanse of the area and type of terrain, the distribution of the target species, and the effects on any nontarget species (that is, they trap native wildlife as well). While the Department of the Interior, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), and State of Florida entities have conducted some research on control tools, there are currently no such tools available that would be adequate for eradication of an established population of large constrictor snakes, such as the Burmese python, once they have spread over a large area.

Efforts to eradicate the Burmese python in Florida have become increasingly intense as the species is reported in new locations across the State with ''python catch'' training sessions scheduled in locations necessary to keep the expansion to a minimum. Natural resource management agencies are expending scarce resources to devise methods to capture or otherwise control any large constrictor snake species. These agencies recognize that control of large constrictor snakes (as major predators) on lands that they manage is necessary to prevent the likely adverse impacts to

the ecosystems occupied by the invasive snakes.

The final economic analysis was prepared for the constrictor snakes (USFWS January 2012) and provides the following information about the expenditures for research and eradication in Florida, primarily for Burmese pythons, which provides some indication of the efforts to date. The Service spent about $600,000 over a 3-year period (2007 to 2009) on python trap design, deployment, and education in the Florida Keys to prevent the potential extinction of the endangered Key Largo woodrat (*Neotoma floridana smalli*) at Crocodile Lake National Wildlife Refuge. The South Florida Water Management District spent $334,000 between 2005 and 2009 and anticipates spending an additional $156,600 on research, salaries, and vehicles in the next several years. An additional $300,000 will go for the assistance of USDA, Wildlife Services (part of USDA Animal and Plant Health Inspection Service). The USDA Wildlife Research Center (Gainesville, Florida, Field Station) has spent $15,800 from 2008 to 2009 on salaries, travel, and supplies. The USGS, in conjunction with the University of Florida, has spent more than $1.5 million on research, radio telemetry, and the development, testing, and implementation of constrictor snake traps. Miami-Dade County Parks and Recreation Department, Natural Areas Management and Department of Environmental Resources Management have spent $60,875 annually on constrictor snake issues. The National Park Service has spent $317,000 annually on various programs related to constrictor snake issues in Everglades National Park. All these expenditures total $5.7 million from 2005 to approximately 2012, or roughly an average of $720,000 per year. Despite this investment, all of these efforts have failed to provide a method for eradicating large constrictor snakes in Florida.

Kraus (2009) exhaustively reviewed the literature on invasive herpetofauna. While he found a few examples of local populations of amphibians that had been successfully eradicated, he found no such examples for reptiles. He also states that, ''Should an invasive [nonnative] species be allowed to spread widely, it is usually impossible—or at best very expensive—to eradicate it.'' The Burmese python is unlikely to be one of those species that could be eradicated.

Eradication will almost certainly be unachievable for a species that is hard to detect and remove at low densities, which is the case with all of the four large constrictor snakes. They are well-camouflaged and stealthy, and, therefore, nearly impossible to see in the wild. Most of the protective measures available to prevent the escape of Burmese pythons are currently (and expected to remain) cost-prohibitive and labor-intensive. Even with protective measures in place, the risks of accidental escape are not likely to be eliminated. Since effective measures to prevent the establishment in new locations or eradicate, manage, or control the spread of established populations of the Burmese python are not currently available, the ability to rehabilitate or recover ecosystems disturbed by the species is low.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the ability to hunt such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit; however, juvenile constrictor snakes could fall prey to native wildlife such as alligators, raccoons, coyotes, and birds of prey (hawks, owls, eagles). In addition, a large constrictor snake could prey on other invasive, nonnative species, such as green iguanas, feral hogs, and black rats. However, the effect on the populations of these feral hogs, rats, and other such nonnative species is likely to be negligible. Conversely, the effect of predation on rare species is greater, because any decrease in populations of rare species makes it less likely for the population to rebound. Therefore, the small possible benefits of having large constrictor snakes as predators in the United States do not warrant encouraging their establishment.

There are no other potential ecological benefits for the introduction of Burmese pythons into the United States.

Conclusion

The Burmese python is one of the largest snakes in the world, reaching lengths of up to 7 m (23 ft) and weights of over 90 kg (almost 200 lbs). This is longer than any native, terrestrial animal in the United States, including alligators, and three times longer than the longest native snake species. Native fauna have no experience defending against this type of novel, giant predator. Hatchling Burmese pythons are about the size of average adult native snakes and can more than double in size within the first year. In addition, Burmese pythons reportedly can fertilize their own eggs and have viable eggs after several years in isolation. Even one female Burmese python that escapes captivity could produce dozens of large young at one time (average clutch size is 36, with a known clutch of 107). Furthermore, a healthy individual is likely to live for 20 to 30 years. Even a small number of pythons in a small area, such as one of the Florida Keys or insular islands, could cause unacceptable effects on federally threatened or endangered species. There are currently no effective control methods for Burmese pythons, nor are any anticipated in the near future.

Therefore, because Burmese pythons have already established populations in some areas of the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to become established in disjunct areas of the United States with suitable climate and habitat if released there; are likely to prey on and compete with native species (including threatened and endangered species); are likely to be disease vectors for livestock or native wildlife; cannot be easily eradicated, prevented from establishing, or reduced from large populations or new locations; and are likely to disturb ecosystems beyond the point of recoverability, the Service finds the Burmese python and its conspecifics to be injurious to humans, agricultural interests, and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Northern African Python

Current Nonnative Occurrences

Several Northern African pythons have been found in Florida and elsewhere in the United States—most of these are assumed to be escaped or released pets (Reed and Rodda 2009). From 2005 to 2009, adults and hatchlings have been captured, confirming the presence of a population of Northern African pythons along the western border of Miami, adjacent to the Everglades (Reed *et al.* 2010). From May 2009 to January 2010, four specimens were found by herpetologists and the Miami-Dade County Anti-Venom Response Unit, including hatchlings and adults collected from an area of about 2 km (1.6 mi) in diameter known as the Bird Drive Recharge Basin (Miami-Dade County) (Reed *et al.* 2010). In 2009, evidence pointed to the presence of a breeding population of Northern African pythons along the

western border of Miami adjacent to the Everglades. Recently, observations and removals of multiple adults, a gravid female, and hatchlings suggest the presence of a reproducing population of Northern African pythons (Reed *et al.* 2010). One Northern African python has also been collected on State Road 72 approximately 6.43 km (4 mi) east of Myakka River State Park, Sarasota County, Florida (K. Krysko, pers. comm. 2010).

In the Commonwealth of Puerto Rico, Northern African pythons have been found in the western region of the island (Mayaguez), the San Juan metro area, and the southern region of the island (Guayama) (J. Saliva, pers. comm. 2009).

Potential Introduction and Spread

Northern African pythons have escaped captivity or been released into the wild in Florida and Puerto Rico and are likely to continue to escape and be released into the wild. Based on Reed and Rodda (2009), extrapolation of climate matching from the native range of Northern African pythons and then mapped to the United States includes a large portion of peninsular Florida, extreme south Texas, most of Hawaii, and Puerto Rico. Northern African pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including rapid growth to a large size with production of many offspring; ability to survive under a range of habitat types and conditions (habitat generalist); behaviors that allow them to escape freezing temperatures; ability to live in urban and suburban areas; ability to disperse long distances; and ability to conceal themselves and ambush prey.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

Northern African pythons are highly likely to prey on native species, including threatened and endangered species. As with most of the giant constrictors, adult African pythons primarily eat endothermic prey from a wide variety of taxa. Adverse effects of Northern African pythons on selected threatened and endangered species are likely to be moderate to high.

Please see *Potential Impacts to Native Species (Including Threatened and Endangered Species)* under Factors that Contribute to the Injuriousness for Burmese Python for a description of the impacts that Northern African pythons would have on native species. These impacts are applicable to Northern African pythons by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the final environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species and other native species from parts of Florida, most of Hawaii, and all of Puerto Rico would be at risk from the establishment of Northern African pythons. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Northern African pythons, and these also have federally threatened and endangered species that would be at risk if Northern African pythons became established.

Potential Impacts to Humans

The introduction or establishment of Northern African pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health. African pythons (both wild and captive-bred) are noted for their bad temperament and readiness to bite if harassed by people. Although African pythons can easily kill an adult person, attacks on humans are uncommon (Reed and Rodda 2009). We do not have any confirmed human fatalities in the United States from Northern African pythons.

Diseases borne by ticks could potentially impact U.S. agricultural industries. One serious possibility is heartwater disease, a potentially catastrophic disease of hoofed animals (including cattle) that is vectored by ticks found on African pythons (such as *Python sebae*), but the ticks are capable of transferring to other species of the genus *Python* in captivity (Reed and Rodda 2009). Northern and Southern African pythons are known hosts of some of these ticks, including *Amblyomma nuttalli, Amblyomma marmoreum, Amblyomma sparsum, Aponomma exornatum, Aponomma flavomaculatum,* and *Aponomma latum* (Burridge 2001).

Factors That Reduce or Remove Injuriousness for Northern African Python

Control

As with the other giant constrictors, once introduced into the wild, eradication, management, or control of the spread of Northern African pythons will be highly unlikely. Please see the *Control* section for the Burmese python for reasons why the Northern African pythons would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit; however, juvenile snakes could fall prey to native wildlife such as alligators, raccoons, coyotes, and birds of prey (hawks, owls, eagles). In addition, a large constrictor snake could prey on other nonnative species such as green iguanas, feral hogs, and black rats. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of Northern African pythons.

Conclusion

Northern African pythons are long-lived (some have lived in captivity for 27 years). The species feeds primarily on warm-blooded prey (mammals and birds). Northern African pythons have been found to be reproducing in Florida. Therefore, they pose a risk to native wildlife, including threatened and endangered species. African pythons (both wild and captive-bred) are noted for their bad temperament and have reportedly also attacked humans.

Because Northern African pythons are likely to escape or be released into the wild if imported to the United States; are likely to spread from their current established range to new natural areas in the United States with suitable habitats; are likely to prey on native species (including threatened and endangered species); are likely to be disease vectors for livestock; and because it would be difficult to eradicate or reduce large populations, or recover ecosystems disturbed by the species, the Service finds the Northern African python to be injurious to humans, agricultural interests, and to wildlife and wildlife resources of the United States.

Factors that Contribute to Injuriousness of the Southern African Python

Current Nonnative Occurrences

Occurrences of the Southern African python in the United States are unknown.

Potential Introduction and Spread

Southern African pythons are large-bodied constrictors that are closely related to Northern African pythons. Because they are so similar to Northern African pythons, they possess the same traits that enable them to be likely to escape or be released into the wild if imported into the United States. Southern African pythons may be substituted for Northern African pythons in the pet trade because of these similarities.

The Southern African python climate match extends slightly farther to the north in Florida than the Northern African python and also includes Texas from the Big Bend region to the southeasternmost extent of the State, as well as parts of Puerto Rico and Hawaii. If Southern African pythons escape or are intentionally released, they are likely to survive or become established within their respective thermal and precipitation limits. Within these limits, Southern African pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including rapid growth to a large size with production of many offspring; are capable of surviving under a range of habitat types and conditions (habitat generalist); have behaviors that allow them to escape freezing temperatures; can live in urban and suburban areas; can disperse long distances; and are well-concealed ambush predators.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

Southern African pythons are highly likely to prey on native species, including threatened and endangered species. As with most of the giant constrictors, adult African pythons primarily eat endothermic prey from a wide variety of taxa. Adverse effects of Southern African pythons on selected threatened and endangered species are likely to be moderate to high.

Please see *Potential Impacts to Native Species (Including Threatened and Endangered Species)* under Factors that Contribute to the Injuriousness for Burmese Python for a description of the impacts that Southern African pythons would have on native species. These impacts are applicable to Southern African pythons by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the final environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species and other native species from parts of Florida, Texas, Hawaii, and Puerto Rico would be at risk from the establishment of Southern African pythons. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Southern African pythons, and these also have federally threatened and endangered species that would be at risk if Southern African pythons became established.

Potential Impacts to Humans

The introduction or establishment of Southern African pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

African pythons (both wild and captive-bred) are noted for their bad temperament and readiness to bite if harassed by people. Although African pythons can easily kill an adult person, attacks on humans are uncommon (Reed and Rodda 2009).

Diseases borne by ticks could potentially impact U.S. agricultural industry. One serious possibility is heartwater disease, a potentially catastrophic disease of hoofed animals (including cattle) that is vectored by ticks found on African pythons (such as *Python sebae*), but the ticks are capable of transferring to other species of the genus *Python* in captivity (Reed and Rodda 2009). Northern and Southern African pythons are known hosts of some of these ticks, including *Amblyomma nuttalli, Amblyomma marmoreum, Amblyomma sparsum, Aponomma exornatum, Aponomma flavomaculatum,* and *Aponomma latum* (Burridge 2001).

Factors That Reduce or Remove Injuriousness for Southern African Python

Control

As with the other giant constrictors, once introduced into the wild, the eradication, management, or control of the spread of Southern African pythons will be highly unlikely. Please see the *Control* section for the Burmese python for reasons why the Southern African pythons would be difficult to control, all of which apply to these large constrictors.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit; however, juvenile snakes could fall prey to native wildlife such as alligators, raccoons, coyotes, and birds of prey (hawks, owls, eagles). In addition, a large constrictor snake could prey on other nonnative species such as green iguanas, feral hogs, and black rats. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of Southern African pythons.

Conclusion

Southern African pythons are long-lived. This species feeds primarily on warm-blooded prey (mammals and birds). Therefore, they pose a risk to native wildlife, including threatened and endangered species. Their climate match extends slightly farther to the north in Florida than the Northern African python and also includes portions of Texas from the Big Bend region to the southeasternmost extent of the State. Because Southern African pythons are likely to escape or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released in suitable habitats; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); are likely to be disease vectors for livestock; cannot be easily eradicated, prevented from establishing, or reduced from large populations or new locations; and are likely to disturb ecosystems beyond the point of recoverability, the Service finds the Southern African python to be injurious to humans, to agricultural interests, and to the wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Yellow Anaconda

Current Nonnative Occurrences

An adult yellow anaconda was collected from Big Cypress National Reserve in southern Florida in January 2007, and another individual was photographed basking along a canal about 25 km (15.5 mi) north of that location in January 2008 (EDDMapS 2011). In 2008, an unnamed observer reportedly captured two anacondas that most closely fit the description of the yellow anaconda farther to the east near the Palm Beach, Florida, county line (EDDMapS 2011). In Puerto Rico, a few individuals of the yellow anaconda have been reported in the central region of the island (Villalba area). In Arkansas, two yellow anacondas were found in Wapanocca National Wildlife Refuge (P. Fuller, pers. comm. 2011).

Potential Introduction and Spread

Yellow anacondas have escaped or been released into the wild in Florida, Arkansas, and Puerto Rico, and are likely to escape or be released into the wild elsewhere. Yellow anacondas are highly likely to survive in subtropical areas of natural ecosystems of the United States. The yellow anaconda has a native-range distribution that includes highly seasonal and fairly temperate regions in South America. When projected to the United States, the climate space occupied by yellow anaconda translates to a fairly large area, including virtually all of peninsular Florida and a corner of southeastern Georgia (to about the latitude of Brunswick), as well as parts of southern and eastern Texas and a very small portion of southern California. Large areas of Hawaii and Puerto Rico appear to exhibit suitable climates, and additional insular United States possessions (Guam, Northern Marianas, American Samoa, and so on) would probably be suitable as well. Within the areas deemed suitable, however, the yellow anaconda would be expected to occupy only habitats with permanent surface water. If yellow anacondas are released into areas with suitable permanent surface water, they would likely disperse because of their propensity for rapid growth to a large size; high reproductive rate; ability to survive under a range of habitat types and conditions (habitat generalist); behaviors that allow them to escape freezing temperatures; ability to live in urban and suburban areas; ability to disperse long distances; and well-concealed, ambush-type of predatory behavior.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

Yellow anacondas are highly likely to prey on native species, including select threatened and endangered species. The prey list suggests that yellow anacondas employ both ''ambush predation'' and ''wide-foraging'' strategies (Reed and Rodda 2009). The snakes forage predominately in open, flooded habitats, in relatively shallow water; wading birds are their most common prey. They have also been known to prey on fish, turtles, small caimans, lizards, birds, eggs, small mammals, and fish carrion (Reed and Rodda). Threatened and endangered species occupying flooded areas, such as the Everglades, would be at risk.

Please see *Potential Impacts to Native Species (Including Threatened and Endangered Species)* under Factors that Contribute to the Injuriousness for Burmese Python for a description of the impacts that yellow anacondas would have on native species. These impacts are applicable to yellow anacondas by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the final environmental assessment.

While we did not itemize the federally threatened and endangered species from southern California, Texas, southeast Georgia, and other States, there are likely several hundred species in those and other States that would be at risk from yellow anaconda. According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, Hawaii, and Puerto Rico would be at risk from the establishment of yellow anacondas. In addition, Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support yellow anacondas, and these also have federally threatened and endangered species that would be at risk if yellow anacondas became established.

Potential Impacts to Humans

The introduction or establishment of yellow anacondas may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for Yellow Anaconda

Control

Once introduced into the wild, the eradication, management, or control of the spread of yellow anacondas will be highly unlikely. Please see the ''*Control''* section for the Burmese python for reasons why yellow anacondas would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit; however, juvenile snakes could fall prey to native wildlife such as alligators, raccoons, coyotes, and birds of prey (hawks, owls, eagles). In addition, a large constrictor snake could prey on other nonnative species such as green iguanas, feral hogs, and black rats. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of yellow anacondas.

Conclusion

Yellow anacondas are highly likely to survive in the appropriate natural ecosystems of the United States. The species has a native-range distribution that includes highly seasonal and fairly temperate regions in South America. When projected to the United States, the climate space occupied by yellow anaconda maps to a fairly large area, including virtually all of peninsular Florida and a corner of southeastern Georgia (to about the latitude of Brunswick), as well as large parts of southern and eastern Texas and a small portion of southern California. Large areas of Hawaii and Puerto Rico appear to exhibit suitable climates, and additional insular U.S. possessions (such as Guam, Northern Marianas, American Samoa) would probably be suitable as well. Yellow anacondas are highly likely to spread to suitable permanent surface water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist-surprise attack predation.

Because the yellow anacondas are likely to escape captivity or be released into the wild if imported to the United

States (note that the yellow anaconda has already been found in the wild in Florida and Arkansas); are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); cannot be easily eradicated, prevented from establishing, or reduced from large populations or new locations; and are likely to disturb ecosystems beyond the point of recoverability, the Service finds the yellow anaconda to be injurious to humans and to the wildlife and wildlife resources of the United States.

Conclusions for the Four Constrictor Snakes

Burmese Python

The Burmese python is one of the largest snakes in the world, reaching lengths of up to 7 m (23 ft) and weights of over 90 kilograms (kg) (almost 200 pounds (lbs)). This is longer than any native, terrestrial animal in the United States, including alligators, and three times longer than the longest native snake species. Native fauna have no experience defending against this type of novel, giant predator. Hatchling pythons are about the size of average adult native snakes and can more than double in size within the first year. In addition, Burmese pythons reportedly can fertilize their own eggs and have viable eggs after several years in isolation; therefore, it is possible that a population of Burmese pythons could be established with only a small number of females. Burmese pythons are long-lived, with a life expectancy of 20 to 30 years. Thus, even a single python (especially a female) in a small area, such as one of the Florida Keys or insular islands, can devastate the population of a federally threatened or endangered species. There are currently no effective control methods for Burmese pythons, nor are any anticipated in the near future.

Therefore, because Burmese pythons have already established populations in some areas of the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to become established in disjunct areas of the United States with suitable climate and habitat if released there; are likely to prey on and compete with native species (including threatened and endangered species); are likely to be disease vectors for livestock or native wildlife; are likely to damage ecosystems that would be difficult or impossible to recover; and are difficult or impossible to eradicate or control once established, the Service finds the Burmese python to be injurious to humans, agricultural interests, and to wildlife and wildlife resources of the United States. We have evaluated the species *Python molurus* as a whole (including Burmese and Indian pythons), and we have determined that it should be listed as injurious. Moreover, we note that each of its subspecies share the traits that make this species injurious.

Northern African Python

Northern African pythons are long-lived (some have lived in captivity for 27 years). The species feeds primarily on warm-blooded prey (mammals and birds). Northern African pythons now have an established self-sustaining breeding population west of Miami, Florida. This area is within the known distribution of Burmese pythons in Florida, and hybridization between these species is known in captivity. The likelihood of hybridization among introduced Florida populations is unknown, as are the implications of genetic admixture for control purposes (Reed and Rodda 2009). Therefore, they pose a risk to native wildlife, including threatened and endangered species. African pythons (both wild and captive-bred) are noted for their bad temperament and have reportedly also attacked humans.

Because Northern African pythons are likely to escape or be released into the wild if imported to or transported within the United States; are likely to survive, become established, and spread from their current established range to new natural areas in the United States with suitable habitats; are likely to prey on and compete with native species (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control the spread to new locations; or to recover ecosystems disturbed by the species, the Service finds the Northern African python to be injurious to humans and to wildlife and wildlife resources of the United States.

Southern African Python

Southern African pythons are long-lived. This species feeds primarily on warm-blooded prey (mammals and birds). Therefore, they pose a risk to native wildlife, including threatened and endangered species. Their climate match extends slightly farther to the north in Florida than the Northern African python and also includes Texas from the Big Bend region to the southeasternmost extent of the State as well as parts of Puerto Rico and Hawaii.

Because Southern African pythons are likely to escape or be released into the wild if imported to or transported within the United States; are likely to survive, become established, and spread if escaped or released in suitable habitats; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the Southern African python to be injurious to humans and to the wildlife and wildlife resources of the United States.

Yellow Anaconda

Yellow anacondas are highly likely to survive in the appropriate natural ecosystems of the United States. The species has a native-range distribution that includes highly seasonal and fairly temperate regions in South America. When projected to the United States, the climate space occupied by yellow anaconda maps to a fairly large area, including virtually all of peninsular Florida and a corner of southeastern Georgia (to about the latitude of Brunswick), as well as large parts of southern and eastern Texas. Large areas of Hawaii and Puerto Rico appear to exhibit suitable climates, and additional insular U.S. possessions (such as Guam, Northern Marianas, American Samoa) would probably be suitable as well. Yellow anacondas are highly likely to spread to suitable permanent-surface-water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist surprise-attack predation.

Because the yellow anacondas are likely to escape captivity or be released into the wild if imported to or transported within the United States (note that the yellow anaconda has already been found in the wild in Florida); are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or to recover ecosystems disturbed by the species, the Service finds the yellow anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Summary of Risk Potentials

Reed and Rodda (2009) found that all of the four constrictor snakes pose high risks to the interests of human beings,

agriculture, wildlife, and wildlife resources of the United States. These risk potentials utilize the criteria for evaluating species as described by ANSTF (1996) (see Lacey Act Evaluation Criteria above). Based on the risks determined by Reed and Rodda (2009), substantive information submitted during the public comment periods and from the peer reviewers, along with the latest findings regarding the large constrictor snakes (in Florida, Puerto Rico, and elsewhere), the Service concludes that the four constrictor species should be added to the list of injurious reptiles under the Lacey Act.

Comments Received on the Proposed Rule

During the two public comment periods for the proposed rule, we received approximately 56,500 comments, including form letters, petitions, and post cards. We received comments from Federal agencies, State agencies, local governments, commercial and trade organizations, conservation organizations, nongovernmental organizations, and private citizens; all were in English with the exception of a few in Dutch, French, German, and Italian. The comments provided a range of views on the proposed listing as follows: (1) Unequivocal support for the listing with no additional information included; (2) unequivocal support for the listing with additional information provided; (3) equivocal support for the listing with or without additional information included; (4) unequivocal opposition to the listing with no additional information included; and (5) unequivocal opposition to the listing with additional information included.

To accurately review and incorporate the publicly provided comments in our final determination, we worked with researchers in the Qualitative Data Analysis Program at the University of Massachusetts Amherst and the University of Pittsburgh—developers of the *Public Comment Analysis Toolkit (PCAT)* analytical software. The PCAT enhanced our ability to review large numbers of comments, including large numbers of similar comments on our proposed listing, allowing us to identify similar comments as well as individual ideas, data, recommendations, or suggestions on the proposed listing. We are also responding to some comments that are out of the purview of this rule in a concerted effort to explain our rationale to the public.

Peer Review of the Proposed Rule

In accordance with peer review guidance of the Office of Management and Budget ''Final Information Quality Bulletin for Peer Review,'' released December 16, 2004, and Service guidance, we solicited expert opinion on information contained in the proposed rule (which was for nine species) from five knowledgeable individuals selected from specialists in the relevant taxonomic group and ecologists with scientific expertise that includes familiarity with alien herpetological introductions and invasions, predictive tools for risk assessment, and invasion biology. We posted our peer review plan on the Service's Region 4 Web site (*http://www.fws.gov/southeast/informationquality*), explaining the peer review process and providing the public with an opportunity to comment on the peer review plan. No comments were received regarding the peer review plan. The Service solicited independent scientific reviewers who submitted individual comments in written form. We avoided using individuals who had already expressed strong support for or opposition to the petition and individuals who were likely to experience personal gain or loss (financial, prestige, *etc.*) as a result of the Service's decision. Department of the Interior employees were not utilized as peer reviewers.

We received responses from five peer reviewers. Two peer reviewers found that, in general, the proposed rule represented a comprehensive and up-to-date compilation of the best scientific information known about the nine constrictor snake species and conclusions drawn from both published and unpublished sources were scientifically robust, and justified the proposed rule. Two peer reviewers expressed concern with the climate-matching methods and assumptions.

In addition, all peer reviewers stated that the background material on the biology, invasive potential, and potential tools for control of each snake species represented a solid compilation of available information. They further stated that the information as presented justified the conclusion that the snake species should be listed as injurious. All five peer reviewers concluded that the data and analyses we used in the proposed rule were appropriate and the conclusions we drew were logical and reasonable. Several peer reviewers provided additional insights to clarify points in the proposed rule, or references to recently published studies that update material in the rule.

Peer Review Comments

We reviewed all comments received from peer reviewers for substantive issues and new information regarding the proposed rule. We consolidated the comments and responses into key issues in this section. We refer to them as PR (Peer Reviewer) 1 through 5. We revised the final rule to reflect peer reviewer comments, where appropriate, and the most current scientific information, including the results of the new USGS climate match publication (Rodda *et al.* 2011), plus a number of new peer-reviewed journal articles. We have taken our best effort to identify the limitations and uncertainties of the climate-matching models and their projections used in the proposed rule. We have also taken our best effort to correct any grammatical or biological errors and clarify certain ambiguous statements.

Comment PR1: In regard to the USGS publication ''Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor,'' which includes management profiles discussing colonization potentials with climate matching maps, there are very few details or data presented in the manuscript that would allow an independent test of the model, predictions, or assumptions. At a minimum, the threshold values that were used in the climate space model should be explicitly stated for each species. This would allow reviewers to evaluate the data and the assumptions used in the construction of the model.

Response PR1: This general critique is incorrect; all of the species-specific information used to assess risks is presented in the document mentioned. That this procedure cannot be reduced to mathematical certainty is the reason a risk assessment (rather than a calculation) was conducted. This specific critique is also incorrect. The requested threshold values are provided graphically for each of the species in Reed and Rodda (2009). For example, the *Python molurus* values are in Figure 4.3 (page 51) (heavy and dashed black lines), the *P. sebae* and *P. natalensis* values are in Figures 6.4 (page 118) and 6.5 (page 119), respectively (heavy black lines), and so forth.

For readers who want to duplicate the climate match results, the USGS has published a data series report with data used for modeling and the equations corresponding to these lines (*http://pubs.usgs.gov/ds/579/*) (Jarnevich *et al.* 2011), but the graphical representations in Reed and Rodda (2009) provide the same information with the precision that is appropriate for the use of these values. Use of these values with greater precision would not be appropriate given the conceptual and scientific

uncertainties that attend state-of-the-art implementation of climate matching.

Comment PR2: The data used for the risk assessment seems fair. This reviewer, however, was not convinced that the assignment of low, medium, and high establishment and consequence scores was sufficiently objective or transparent. There appear to be high levels of uncertainty involved in the process (pp. 253, 259: Reed and Rodda 2009). Though there is not really an alternative with the amount of data available, the approach would be more acceptable if it was transparent (what constitutes each level of certainty and how one decides on high, medium, or low for each contributing factor).

Response PR2: The risk assessment process allows for analyzing, identifying, and estimating the dimension, characteristics, and type of risk. By applying analytical methods while acknowledging the assumptions and uncertainties involved, the process allows the assessors to utilize qualitative and quantitative data in a systematic and consistent fashion. The assessment strives for theoretical accuracy while remaining comprehensible and manageable, and the scientific and other data compiled for each snake species in the bio-profiles is organized and recorded in a formal and systematic manner. The assessment provides a reasonable estimation of the overall risk. The authors were careful to ensure that the process clearly explained the uncertainties inherent in the process and to avoid design and implementation of a process that reflected a predetermined result. Quantitative and qualitative risk assessments should always be buffered with careful professional judgment. If every statement was certain, we would not need a risk assessment. The need to balance risks with uncertainty can lead assessors to concentrate more on the uncertainty than on known facts that may affect impact potential. Risks identified for nonnative invasive large constrictor species (and other nonnative invasive species besides large constrictors) in other regions often provide the justification in applying management measures to reduce risks in regions where the species have not yet been introduced. Thus, risk assessments should concentrate on evaluating potential risk.

Uncertainty, as it relates to the individual risk assessment, can be divided into three distinct types: (a) Uncertainty of the process—(method); (b) uncertainty of the assessor(s)—(human error); and (c) uncertainty about the organism—(biological and environmental unknowns). All three types of uncertainty will continue to exist regardless of future developments. The inferential estimation of organism risk can be rated using high, medium, or low. The biological and other information assembled under each element will drive the process. This forces the assessor to use the biological information as the basis for his or her decision. Thus, the process remains transparent for peer review. The high, medium, and low ratings of the individual elements contributing to the probability of organism establishment (such as organism with pathway, entry potential, colonization potential, and spread potential) cannot be defined or measured—they have to remain judgmental. This is because the values of the elements contained under ''Probability of Establishment'' are not independent of the rating of the ''Consequences of Establishment.'' Specific traits or biological characteristics were assessed for each snake species to arrive at each high, medium, or low rating. The strength of the analysis is not in the element-rating but in the detailed biological and other relevant information that supports them. Reed and Rodda (2009) followed the ANSTF 1996 (see Lacey Act Evaluation Criteria section above for explanation of this method) guidelines for combining scores and noting that certainty levels for each component of the process were followed by the risk assessors. The logic that was applied to develop every step of the risk assessment analysis can be found in Chapter Ten of Reed and Rodda (2009).

Comment PR3: Jacobs *et al.* (2009) elevated the Burmese python back to full species rank (that is, the form was historically described as *Python bivittatus,* then lumped with *P. molurus,* and then upon recent reevaluation, elevated back to full species rank). Climate data for *P. molurus* should, therefore, not have been used to project the area potentially suitable for *P. bivittatus,* a different species.

Response PR3: Jacobs *et al.* (2009) presented one side of an argument that has been debated for almost 100 years; they argued for full species status, but did not have the authority to declare their preference to be a fact. Other biologists reject that opinion (which depends not only on the unresolved definitions of species and subspecies, but on the biological and genetic facts pertaining to this specific population, which are not known). Jacobs *et al.* (2009) added new information on some insular forms but did not present new data on the key question being contested, which is whether genes are periodically or regularly exchanged between the populations usually described as *P. m. molurus* and *P. m. bivittatus.* In the absence of decisive information on that crucial question and on the question of competitive interactions between the two forms, it would be inappropriate to assume that the ecological behavior of *P. m. bivittatus* is independent of that of *P. m. molurus.* Furthermore, even a finding of ecological independence of *P. m. bivittatus* would not appreciably alter either the cold tolerance of the species or the likelihood of its establishment in the United States, which were the primary uses of this information in the risk assessment (Rodda *et al.* 2011). The assertion that the Burmese form shows less cold tolerance than the Indian form is not supported by the peer-reviewed literature.

Comment PR4: The Pyron *et al.* (2008) paper offers a more sophisticated and scientifically main-stream analysis that predicts virtually no expansion of the python population in Florida. The Pyron *et al.* (2008) paper very clearly and persuasively describes the flawed result in the Rodda *et al.* (2008) paper and offers a superior alternative analysis.

Response PR4: A paper by R. Alexander Pyron, Frank T. Burbrink, and Timothy J. Guiher, ''Claims of potential expansion throughout the U.S. by invasive python species are contradicted by ecological niche models,'' published in PLoS ONE online in August 2008, was published after the Rodda *et al.* (2008) paper. In a response to a complaint from the public to USGS, a panel composed of representatives from the USGS and the Service was convened to review an information quality appeal and address concerns about ''unwarranted assumptions and defective methodologies.'' The panel determined that the Rodda *et al.* (2008) paper met the requirements of independence, with two of the three peer reviewers coming from outside the USGS, as well as having an internal supervisory review. Based on this affirmation of peer review, the panel agreed that it was unlikely that there were ''unwarranted assumptions or defective methodologies.'' The panel considered the Rodda *et al.* (2008) and Pyron *et al.* (2008) papers as a good example of ''dueling models'' and agreed that such disagreements were well within the tradition of scientific dialog where different points of view could be worked through the scientific method. Such differences were not ''incorrect,'' rather they were critical to the evolution of scientific thought. Because a later-published paper (in this case Pyron *et al.* 2008) differs from a

previous paper (Rodda *et al.* 2008) does not mean the previous paper should be changed. A new paper published by the USGS (Rodda *et al.* 2011) continues the dialog and elucidates scientific concerns with Pyron *et al.* (2008). Rodda *et al.* (2011) demonstrate that the Pyron *et al.* (2008) result was largely a product of erroneous data input and incorrect use of the MaxEnt modeling program and that MaxEnt models based on climatic variables for Burmese pythons as used by Pyron *et al.* (2008) are highly unstable and statistically questionable. Please see ''Need for the Final Rule'' section above for more information on the differences between the two models.

Comment PR5: The term ''zoological'' is ambiguous and could lead to a potential loophole for those activities for which permitted importation could be allowed, hence, any activity pertaining to these snakes could be claimed to be ''zoological.''

Response PR5: This rulemaking addresses whether the identified species of large constrictor snakes qualify as injurious and, therefore, should be added to the list of injurious reptiles. The rule does not address under what circumstances a person may qualify for exception to the importation or interstate transportation prohibitions under the zoological purposes provisions. Therefore, this comment is outside of the scope of this rulemaking.

Public Comments

We reviewed all comments received from the public particularly for substantive issues and new information regarding the proposed rule to list the nine large constrictor snakes. We consolidated the following comments and our responses into key issues that are not in any particular order. We are also referring to only the four species in this final rule unless otherwise appropriate to include the other five species for the comments and our response to comments.

Health and Welfare of Human Beings

(1) *Comment:* Some people have been killed and more have been injured in the United States by nonnative large constrictor snakes that were kept as pets.

Our Response: One commenter submitted a list of 179 reports that included accounts of human injuries and fatalities from nonnative constrictor snakes, nonnative constrictor snakes that escaped or were spotted in the wild, and nonnative constrictor snakes kept in inhumane conditions that were reported in the media that occurred in the United States between 1980 and 2010. The accounts included reports of Burmese pythons, African (rock) pythons, reticulated pythons, boa constrictors, green anacondas, and yellow anacondas, and unidentified large constrictor snakes. The list contains accounts from 39 States, including Alaska and Hawaii. Of the 179 total reports, 21 were attacks on people, 13 of which resulted in human fatalities. Burmese pythons reportedly attacked eight of those people, resulting in four deaths. African (rock) pythons (not distinguished by species) reportedly attacked one person fatally. Pythons of undeclared species reportedly attacked seven people, with five resulting in death. One unidentified constrictor reportedly wrapped around a motorist's neck and caused an automobile crash. Another commenter sent an additional report of a pet python (not identified to species) that killed a child in Minnesota (date unknown).

We acknowledge that there have been reports of deaths and injury due to encounters with nonnative large constrictor snakes, but the accounts identified by the commenter involved snakes held in captivity. We do not know of any free-ranging nonnative large constrictor snakes that have injured or killed anyone in the United States. Human fatalities from nonvenomous snakes in the wild are rare (Reed and Rodda 2009). An indirect risk is that large snakes may stretch across roads to obtain heat from the pavement on cool days, posing a hazard to motorists who swerve to avoid hitting them (Snow *et al.* 2007; Harvey *et al.* 2008). Please see ''*Potential Impacts to Humans''* in each species above for further information.

(2) *Comment:* The actual physical danger that these snakes pose to humans and public safety has been grossly overstated, and there have only been 12 human fatalities attributed to these snakes since 1980, an average of 0.4 deaths per year are attributed. Those fatalities are usually a direct result of either improper care and handling of the animal, or feeding-related errors on the part of the keeper or pet owner.

Our Response: We agree that, while there have been 14 human deaths that we know of since 1980, this number is small relative to other causes of death. We do not wish to overstate the risk to public safety. We agree that the preeminent issue is not one of public safety, because we know of no large constrictor snake attacks in the United States from free-ranging snakes. We also note that, in their native ranges, reports of snake attacks on humans in the wild are rare, although they have occurred (Reed and Rodda 2009). However, the remoteness of the native ranges of the any of the species may preclude deaths from being reported. Reed and Rodda 2009 state that virtually all known human fatalities are associated with pet manipulation. However, Snow *et al.* (2007) and Harvey *et al.* (2008) also noted that large constrictors crossing roads could cause traffic accidents. In general, we agree that the risk to human safety is not in itself a substantial factor in listing any of these species as injurious.

(3) *Comment:* Boa constrictors should be removed from the rule. These snakes have never killed their keepers, nor have they killed anyone else. There has never been a documented human death by a boa constrictor.

Our Response: Taking full account of public comments and relevant factors, we have not listed boa constrictors at this time. We will address this comment in more detail when we publish a determination of whether this species should be listed as injurious.

Large Constrictor Snakes as Pets and Hobby

(4) *Comment:* Most people in the reptile hobby who choose to own these larger species are very responsible and do well in keeping their pets and investments healthy and safe, and this includes preventing their escape. It does not stand to reason that the actions of this very limited amount of negligent owners should affect millions of responsible pet owners.

Our Response: While we do not dispute that most constrictor snake owners try to be responsible, the volume of imports and domestically bred snakes is so large (averaging 49,941 annually for the nine proposed species and 12,741 for the four species in this final rule; see our Final Economic Analysis, Table 8) that accidents may happen resulting in snakes escaping or snakes could be intentionally released. Shipping containers may be damaged—and live snakes able to escape—anywhere between the port of import and the destination of the pet owner's home. In that case, the problem could arise before the pet owners acquire the animals.

Another consideration is the risk involved with transporting large, powerful snakes. While keeping a snake in a sedentary home cage may be not in itself be a difficult task, the situation may change when a 20-ft (6-m) snake weighing 200 pounds (91 kg) is transported in a car to a veterinarian. Unless the snake is transported in an escape-proof cage from the house to the automobile to the veterinarian, snakes may find more opportunities for escape. Conversely, small snakes may escape

more easily than large ones because they are more likely to be transported casually, such as carried for show. For example, a boa constrictor that was transported around on its owner's neck on a Boston subway escaped and survived for a month on the heated train in January 2011 before being captured (Associated Press 2011).

We have based our determination on our evaluation of injuriousness to wildlife and wildlife resources and the likelihood that any of the four large constrictor snakes could escape, become established, and cause harm.

(5) *Comment:* These snakes are not injurious wild animals. They are domesticated pets.

Our Response: We recognize that many snakes are kept in captivity with no negative incidences and that they seem tame. However, the fact that various species of wildlife may be kept as pets does not remove these species from the scope of U.S. wildlife laws. Under the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42), all four of these species are wild. Therefore, we have the authority to list all of the four species of constrictor snakes once we determine that they are injurious. We base our determination as injurious on their effect on any one of the following: the interests of human beings, agriculture, horticulture, forestry, wildlife, or wildlife resources of the United States.

(6) *Comment:* I have kept more of these animals than anyone you will ever meet, and I can assure you, they are not injurious in any way.

Our Response: We recognize that there are various meanings of ''injurious.'' However, under the Service's authority, the Lacey Act (18 U.S.C. 42), and for the purpose of this rule, injurious wildlife are wild mammals, wild birds, amphibians, reptiles, fish, crustaceans, mollusks, and their offspring or gametes that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife or wildlife resources of the United States. A wildlife species does not need to be injurious to all of the above interests to be listed. If a species is injurious to wildlife or wildlife resources of the United States (including its territories and insular possessions), we have the authority to list that species.

(7) *Comment:* We agree that ownership of certain animals should be restricted; however, we feel that banning the species *Boa constrictor* fails to address current concerns, is unnecessarily restrictive, and counter-productive. This species also represents the largest portion of the nine species listed in the proposed rule.

Our Response: Taking account of public comments and relevant factors, we have not listed *Boa constrictor* at this time. We will address this comment in more detail when we publish a determination of whether this species should be listed as injurious.

(8) *Comment:* This rule will destroy the ability of animal hobbyists, who are our future biologists and conservationists, to explore and learn about these specific animals, thus limiting exposure to the natural world at large.

Our Response: The commenters did not explain how the rule will destroy the ability of animal hobbyists to learn about these animals. Hobbyists will still be allowed to keep their snakes and offspring and to acquire additional ones within their State (and consistent with their State's own laws). The long lives of these species improve the chances that the hobbyists will have their pets for one or more decades, generally much longer than amphibian and tropical fish hobbyists. Hobbyists still have many other species of snakes and other reptiles to choose from that are not listed as injurious. We hope that, with this rule, future biologists and conservationists will learn about the ecological role of these species in their native lands and in lands where they become invasive.

Unprecedented Regulation

(9) *Comment:* It is unprecedented that a ban be placed on a group of animals that is so prevalent in the pet industry and kept by so many hobbyists.

Our Response: We agree that we have never listed any species that is so prevalent in the pet industry as some of these large constrictor snakes. However, the Lacey Act does not preclude listing a species that is prevalent in the pet industry, provided that the species meets the criteria of injuriousness. In addition, this regulation is not a ban on possessing any of the species. States, however, independently from this rule, may have their own restrictions, and these restrictions may be more stringent than this Federal rule. In other words, individual States may ban possession of any of these species. This final rule only establishes a prohibition against importation and interstate transportation of listed species without a permit. Furthermore, only one of the species that we are listing (Burmese python) is common in the pet trade; the other three constrictor species are rarely or not traded. Lastly, the most commonly imported constrictor snake in the pet industry by far—the ball python (*Python regius;* 78.6 percent of the constrictor snake species reviewed in our economic analysis)—is not being listed as injurious.

Other Animals More Injurious

(10) *Comment:* A better argument based on safety and health statistics could be made to ban horses or dogs, as the average American is more likely to be injured or killed by either of those animals than any reptile. Certainly there are other species such as feral cats, dogs, rats, pigeons, starlings, and pigs, that each cause more damage to the environment of South Florida.

Our Response: As the commenter correctly points out, many species of feral domesticated animals are considered invasive and have caused harm to humans and natural resources in south Florida and other parts of the United States. However, the agency has only the authority to list ''wild'' birds and ''wild'' mammals as injurious wildlife where, under section 42(a)(2) of 18 U.S.C., the term ''wild'' is specific to any animals that, whether or not raised in captivity, are normally found in a wild state. Dogs, cats, and horses are considered domesticated animals under 50 CFR 14.4 regulations and, therefore, cannot be listed as injurious wildlife.

This rule is in response to a petition to list one of the largest constrictor snakes in the world. Based on the best available information, we have found that the four species covered by this final rule are injurious to human beings, to the interests of agriculture, or to the wildlife or wildlife resources of the United States. This does not mean that we believe these snakes to be the most injurious of all wild animals.

Effort to Ban Pets

(11) *Comment:* This snake ban opens the door to many other animals being banned. If this rule is passed, then next it will be foreign reptiles all together, followed closely by a different ban, followed by an eventual ban on reptiles, period. Next it will be cats, dogs, fish, and birds.

Our Response: This rule does not ban possession of any species. As stated above in the **SUMMARY**, the rule prohibits only the importation and interstate transportation. This is the only authority provided to the Secretary of the Interior by Congress under the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42). Three of the four species of large constrictor snakes are already in captivity in the United States and are available for acquisition within each State (unless otherwise regulated by your State's laws). In addition, any species under

consideration for listing as injurious is evaluated on a case-by-case basis, using all available information relevant to whether it is or is not injurious. Therefore, this rule does not set up a trend to ban ownership of any particular species or groups of species. Second, the Lacey Act does not provide the authority to list domesticated mammals and birds as injurious. Section 42(a)(1) of the Lacey Act specifies that we may list only ''wild mammals'' and ''wild birds,'' as opposed to domesticated mammals and domesticated birds. This means that we cannot list domestic dogs, cats, horses, certain species of birds, and so on. However, all reptiles are considered wild and can be considered injurious wildlife if they meet the listing criteria (see ''Lacey Act Evaluation Criteria section'' above for explanation). Domesticated animals are defined in 50 CFR 14.4.

Effect of Rule on Welfare of Large Constrictor Snakes

(12) *Comment:* This rule change basically represents a death sentence for millions of reptiles in the United States. Many of these snakes will be abandoned and set free where they will surely suffer and die.

Our Response: We disagree that this rulemaking will result in the death of millions of reptiles currently being held in captivity. We have been clear that all owners of any of the snakes listed as injurious will be allowed to keep them under this rule. For animals already in the United States, this rule only restricts shipment between States. We emphasize that it will be lawful for pet owners to keep their pets (if allowed by State law). We have no reason to believe that responsible, caring owners will kill or release them into the wild because they can keep them. Breeders may still be able to export through a port in their own State (see response to Comment 47 for exporting explanation). For breeders who can no longer export, they may find buyers in their own State. For information on how to find a home for a snake that a person can no longer keep, we posted some suggestions on *http://www.regulations.gov* at the time the proposed rule was published on March 12, 2010 (separate file ''Questions and Answers''). We explained:

''If you are in a position where you must give up your pet [large constrictor snake], and zoos and humane societies have declined your efforts to donate the animal, you should contact either your State fish and wildlife agency or your local U.S. Fish and Wildlife Service office. These two government agencies are the legal authorities that co-manage fish and wildlife in this country, and they can help you to resolve this issue. The U.S. Fish and Wildlife Service is working with States around the country and the pet and aquarium industry through a campaign called Habitattitude™ to help pet owners adopt environmentally responsible actions for surrendering their pets, such as:

- Contacting the retailer for proper handling advice or for possible return;
- Giving or trading with another pet owner;
- Donating to a zoo, humane society, nature center, school, or pet retailer; and
- Contacting a veterinarian or pet retailer for guidance on humane disposal of animals.''

For those pet owners who move to another State, we also suggest contacting a local herpetology club or a national reptile organization with local members to find someone to adopt those constrictor snakes.

(13) *Comment:* What would happen to the businesses operated by thousands of families in the industry with this rule? It is doubtful that those animals would be humanely euthanized (due to finances and ethical objections), so those animals would either be subjected to inhumane practices or become liabilities to those persons who have them. It would be a cruel irony that the animal rights agenda of eliminating these animals from the pet trade would result in the destruction of millions of animals that have proven to be nondangerous.

Our Response: Family businesses will still be able to operate, provided they either sell within their State or have a port of export directly from their State (see response to Comment 47 for exporting explanation). Businesses may switch to other species of snakes that are not listed. Please see our response to Comment 12 on alternatives for disposing of animals that you can no longer keep. Owners are encouraged to find legal alternatives, such as trading species with someone in their own State who has a species that is not listed and who is able to keep a listed species in that State. We emphasize that it will be lawful for pet owners to keep their pets (if allowed by State law) but unlawful to release them or transport them across State lines.

Regarding the statement that these snakes are nondangerous, we emphasize that we distinguish between ''nondangerous,'' which we assume the commenter means ''does not harm people,'' and ''injurious,'' which has a different meaning under the Lacey Act. We agree that these four species of snakes pose only a small risk of harm to people; however, we are listing them for their injuriousness.

(14) *Comment:* Thousands of snakes' lives will be spared because the majority of reptiles die during capture from the wild or subsequent transport or within the first year of captivity. Banning the importation of these species will ensure that many snakes will not fall victim to the harsh conditions of being shipped overseas.

Our Response: From the Service's Law Enforcement Management Information System (LEMIS) data, we estimate that approximately 96,000 snakes of the four species were imported from 1999 to 2010. Some were probably captured from the wild. Imported snakes are then usually sent to animal dealers before being shipped to pet retailers. Finally, the snakes are typically acquired at a pet retailer and transported to a home or other location. Large constrictor snakes may become ill, injured, or die during transport. Since this listing would place prohibitions on importation and interstate movement of the four species, it is reasonable to assume that fewer animals will therefore die from importation and interstate transport. Although animal welfare is regulated by the Federal government for some taxa (that is, primarily warm-blooded species) under such laws as the Animal Welfare Act, this was not a factor considered in our injurious wildlife evaluation and did not influence our final determination.

Benefits of Having Large Constrictor Snakes in the United States

(15) *Comment:* While the Burmese pythons do consume native species such as wading birds, waterfowl, muskrats, rabbits, opossum, raccoons, and even bobcats and white-tailed deer, they are probably just as likely to prey upon the more common exotic species, such as feral cats and dogs, nonnative rats and mice, starlings, pigeons, collared doves, spiny-tailed iguanas, green iguanas, cattle egrets, and muscovy ducks.

Our Response: We agree that large constrictor snakes, such as Burmese pythons in the Everglades, can potentially prey on other nonnative species, and that this could be beneficial to native wildlife. Snow *et al.* (2007) reported that domestic cats, Old World rats, domestic chickens, and domestic geese have been found in Burmese python digestive systems in Florida. However, of greater conservation and management concern are the effects that invasive species pose to native populations of wildlife and wildlife resources—in particular, those that are threatened and endangered or otherwise

at risk of extinction (Clavero and Garcia-Berthou 2005). Reed and Rodda (2009) listed a total of 64 State-listed threatened or endangered species at risk from Burmese pythons or other large constrictors in Florida alone. This includes the highly endangered Key Largo wood rat, which has been found in the stomachs of Burmese pythons, and whose population may number only in the hundreds. As demonstrated in our injurious wildlife evaluation, we believe that the risks posed by large constrictor snakes to native wildlife and wildlife resources far outweigh the possible benefits they may have as predators of nonnative wildlife in the United States. We do not have information on what the other feral constrictor snakes have eaten. The negative effect of predation on rare species is greater than the effect on exotic species because any decrease in populations of rare species makes it less likely for those populations to rebound.

(16) *Comment:* Some commenters own boa constrictors from regions of Brazil that no longer have boa constrictors due to deforestation. Many of the reptiles present in captive collections are representative of vanishing bloodlines of wild populations of these species. They are conserving wild species.

Our Response: One subspecies covered under this listing is known to be significantly imperiled: the Indian python (*Python molurus molurus*), which is granted a higher level of protection under CITES than most other constrictor species or subspecies (all species in the family Pythonidae are listed in at least Appendix II; several are listed in Appendix I). Indian python (*Python molurus molurus*) is listed as endangered under the U.S.'s Endangered Species Act (ESA) because it is endangered in its native range. Listing these species as injurious will not impact legitimate conservation efforts that U.S. breeders can carry out for species that may be negatively impacted by natural and man-made events within their native range. In general, the Service supports ex-situ conservation efforts, such as captive breeding, when done in a scientific manner for the conservation of a species within its native range. The Act also still allows export of listed species that could be used in re-introduction activities or other in-situ conservation efforts. The Act allows for the issuance of permits authorizing interstate movement or imports for scientific or zoological purposes, including conservation breeding operations.

(17) *Comment:* Many keepers I know are concerned about the worldwide decline of species, and a distributed network of determined keepers may prove the only hope for the survival of several of the species addressed. For example, the natural population of the Burmese python has been on a steady decline due to habitat loss.

Our Response: The Service strongly supports ex-situ conservation programs that are scientifically designed to provide conservation benefits to species in their native range. The listing of these species as injurious will not prevent conservation breeding programs run by dedicated herpetologists and hobbyists from providing a conservation benefit to any of these species (see our response to Comment 16).

State Issue (Not Federal Government)

(18) *Comment:* The constrictor snakes should be listed by individual States, not by the Federal Government.

Our Response: Many commenters suggested that we should not list any of these species and we should allow the States to regulate these species as they see fit. The Service is responsible for implementing and enforcing laws such as the Lacey Act, under which authority we are listing these species. We believe implementation of the injurious wildlife provisions reflects the shared State-Federal governance of invasive species challenges facing the United States as originally intended by Congress. Since these snakes have been found to be injurious to human beings and to wildlife and wildlife resources, we believe federally regulating movements of these four species of constrictors into the United States and between States and territories is an important step in limiting their effects. The States and other jurisdictions within the United States retain the ability to regulate these species as they determine appropriate within their boundaries.

(19) *Comment:* Mere presence of a species does not equate the threat of harm, especially when individuals are cited in environments in which they cannot establish. If this is solid justification for listing a species as injurious, the Service will need to list every organism that has ever—and is ever—spotted outside of captivity in the United States.

Our Response: The Service undergoes a rigorous evaluation before determining that any species is injurious. Mere presence does not qualify a species as injurious. The Service evaluates each species based on numerous criteria (see ''Lacey Act Evaluation Criteria'' section above). We also consider the potential to survive, become established, and spread; likelihood of release or escape; impact to threatened and endangered species and their habitats; and so on. We have determined that the four species of large constrictor snakes covered by this rule are injurious.

Rule Will Not Be Effective

(20) *Comment:* This regulation change will not make the established population of Burmese pythons in Florida disappear.

Our Response: We agree that this rule alone may not reduce the population of Burmese pythons in Florida and certainly not eliminate it. Similarly, it may not reduce or eliminate the populations of northern African pythons in Florida. We do not expect that. However it should reduce the populations of those species in conjunction with control or management programs. Furthermore, we do believe the rule will be effective in other ways. See also our responses to Comments 21 and 22.

(21) *Comment:* Such a rule change disallowing the interstate trade of these species is counter-intuitive and a non sequitur to ban trade between every other State in the Union.

Our Response: From our evaluation of each species (under section ''Factors That Contribute to Injuriousness for Burmese Python'' and the other species above), we believe that prohibiting the interstate trade of these species along with prohibitions of further importations will reduce the risk of them becoming more widespread to new areas of the United States, including the territories and insular possessions. Please also see ''Need for the Final Rule'' section above.

(22) *Comment:* The Lacey Act has never stopped the introduction or eradicated the feral populations of any invasive species, which makes it wholly ineffective in this case.

Our Response: The commenter is correct that no eradication of established feral populations has been accomplished merely by the listing of a species as injurious, but we did not expect that result. Merely preventing introductions of new individuals will not result in the eradication of existing populations (Burmese python and Northern African python). The most likely way for the injurious listing provisions to be successful is if they are applied before a species is present in the United States or in vulnerable parts of the United States. The two other constrictor snake species listed as injurious may be prevented from becoming established in Florida, as well as other vulnerable areas of the country. Furthermore, the purpose of listing the four species in all areas of the country is to prevent any areas of the country

that do not currently have the four species (see ''Potential Introduction and Spread'' sections for each species above) from becoming invaded. Fowler *et al.* (2007) discuss the effectiveness of the Lacey Act listings by looking at all of the species that are currently listed as injurious. They state that, ''None (0%) of the 7 species that were absent from the country at the time of listing have subsequently established populations, and two of the taxa that were present only in captivity (raccoon dog and brushtail possum) did not establish wild populations. [T]wo taxa that were established outside captivity at the time of the listing (European rabbit and Java sparrow) have not spread between states since listing.'' If the rule can prevent introductions to any vulnerable parts of the country, it will be effective.

Educational Use Curtailed

(23) *Comment:* The rule will impact educational outreach at zoos. Educators travel to neighboring States. Burmese pythons are a flagship species for these outreach education activities. Their impressive size and docile disposition make them ideal to provide the basis for explaining complex ecosystems. Providing an opportunity for children to closely view these animals is a tremendous opportunity for snakes and other wildlife, and helps break the cycle of persecution that has caused declines in many snake populations throughout the world. The Act as currently written requires strict and uninterrupted double containment for injurious species. The inclusion of these four taxa of snakes on the list of injurious wildlife will make the use of any of these forms in interstate education programs virtually impossible.

Our Response: Zoos around the country commonly use live animals at the zoo and off-site. The listing of the four species will not prevent such use within the home State of the zoo since these species, such as Burmese pythons, can continue to be used for education in the home State with no permit necessary and no containment requirements (unless there are State requirements).

However, if zoo personnel want to travel across State lines with one of the listed species, the Act would come into effect. The Act requires that the zoo obtain a permit to carry out any interstate movement of a listed species and the specimens being moved would need to be in double-escape-proof containers. Permit applications to carry out interstate movement of listed species for educational purposes can be submitted to the Service, along with an application fee of $25. This is a similar procedure used by zoological and educational institutions to obtain permits for threatened and endangered species, so the institutions may already be familiar with the process.

The commenter is correct that the double-escape-proof container is a requirement of the permit. Moreover, this requirement applies not only when the snake is being transported outside the zoo, but applies within the zoo as well. However, we have found that most zoos that are already permitted for other injurious species can easily comply with the requirements for a minimal extra cost over the standard housing requirements for the species. However, the containment of any injurious species is consistent with the preventative measures of the injurious wildlife provisions of the Lacey Act.

(24) *Comment:* The cost of specimen replacement to zoos will increase dramatically.

Our Response: The commenter provided no evidence that costs will increase dramatically or even at all. Most of the listed species are available by breeders in most States and can be obtained without a permit. If importation is needed, zoos may obtain an importation permit. The cost of a permit is $100 for importation, which covers the whole shipment, even for multiple species and individuals. The cost is $25 for a permit to transport or move animals from one exhibit to another within a permitted institution or between institutions that are already permitted to maintain the same injurious species. The commenter did not explain how often zoos replace specimens, so we do not know how much the cost will increase. Since most of these species have lifespans in captivity of 20 to 30 years (see ''*Biology*'' section of each species), we expect this will not be a frequent need. As for the cost of the snakes, the commenter provides no information that this will increase, nor do we know whether the price of these species on the market will increase, decrease, or remain unchanged. Furthermore, zoos may become a primary beneficiary of constrictor snakes from owners who decide to give up their pets because they are moving out-of-State or for another reason.

(25) *Comment:* The rule will impact our non-outreach collection, the permit preparation time, administrative costs, permit fees, and time delays will be a major hindrance to continuing the management of these species as part of the broader zoo network within the Association of Zoos and Aquariums (AZA). This will make replacing specimens in a timely fashion extremely difficult for our zoo and others. Ultimately, these species may have to be eliminated from our collections.

Our Response: As stated earlier, the rule does not affect intrastate movement of these species nor does it restrict ownership or even captive breeding. It is anticipated that most zoos that already have these species have the capacity to either breed animals already held at the zoo or obtain additional specimens within their State. Zoos may become a primary beneficiary of constrictor snakes from owners who decide to give up their pets because they are moving out-of-State or for other reasons. If this is not sufficient, the Act does have provisions for obtaining specimens from other States or even from foreign sources. The Service recognizes that the permitting process imposes some increased administrative costs and is committed to exercising available flexibilities under its Lacey Act permitting authority to minimize permit application preparation and processing times and to reduce administrative costs. For example, we will do so by issuing permits that authorize multiple interstate movements for educational purposes over extended periods. The Service is committed to finding ways to minimize the time it takes for facilities to obtain authorization for interstate transport or importation so zoos can continue their active management of these species. We do not believe that this listing would result in any zoo having to eliminate these species from their collections.

(26) *Comment:* With my collection, I do school and library visits to give kids who generally do not get the chance to see these animals up close the experience to see them. This in my mind is one step needed in educating people on wildlife conservation as well as responsible pet keeping. I take large snakes and lizards to the kids from all over the world where they would normally never be able to see them. If you ban these reptiles, my life dream will be ruined and I will not be able to continue my life mission to show people these amazing creatures up close.

Our Response: We recognize that many people present large and small live animal programs in communities all over the country. We agree that such programs are important to teach conservation and the value of wildlife. However, this new rule will not prevent these programs from occurring. Providing no State lines are crossed, you can continue your educational programs without the need for a permit from the Service. Furthermore, educators may apply to the Service for a permit to

transport these species across State lines for educational purposes. Lastly, educators can also teach conservation principles by using snake skins, photos, and other tools to teach people about the problems of releasing nonnative species in the United States. We believe conservation can be taught without the exact live specimens of every animal being discussed.

(27) *Comment:* This rule will eliminate a reptile culture for future generations to share in.

Our Response: The commenter did not explain how the reptile culture would be eliminated. This rule will not result in the elimination of reptile ownership or interest in reptiles. The listing does not prohibit ownership of these species or any other reptile species. While the listing will probably result in fewer specimens of these species being available commercially because the listing would reduce the economic incentive for some current breeders from continuing to breed the species, we do not believe that all captive breeding would stop. It is an unfortunate aspect of the need to protect our native wildlife and ecosystems by listing these species as injurious that some people or organizations that currently possess these species would be affected.

Violations and Penalties

(28) *Comment:* If enacted, this rulemaking would have the unprecedented effect of putting as many as a million American citizens in possession of injurious wildlife and subject to potential felony prosecution under the Lacey Act. It could effectively create a new class of criminal out of law-abiding American citizens. This regulation would turn hobbyists' current activities into a Federal crime.

Our Response: These listings under the Lacey Act will have no effect on the majority of owners of these four species. Pet owners who keep their snakes within their own State will not be affected. Examples of owners who will be affected: (1) People who take their pets to a veterinarian in another State; (2) people who wish to transport their pets across a State line, such as if the owners are moving; and (3) people who keep large constrictor snakes as a business and sell to other States. However, many States have laws against possessing wild animals, and these snakes may not be allowed into those States by State law anyway. Examples are Hawaii (all snakes), Florida (for Burmese python, Northern and Southern African pythons, and other species), Iowa (North African python and all *Eunectes* spp.), and New York (Burmese and North African pythons) (see our Final Environmental Assessment 2012). State laws may be more stringent than Federal laws and should not be confused with Federal laws. Our response to (1) above is that pet owners are free to locate a veterinarian in their own State. The pet industry and veterinary organizations could work together to help the owners of the four species to locate willing veterinarians within a reasonable driving distance. Our response to (2) above is that people who are moving should seek alternatives such as those suggested in our response to Comment 29.

The subject of violations under the Lacey Act has frequently been misunderstood and caused undue consternation among animal owners. We will explain here how the Lacey Act will address the new injurious listings. A person would violate the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42) if he or she did one of the following with any one of the four constrictor species listed as injurious: (1) Transported between the States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever; or (2) imported into the United States from another country. In either case, notwithstanding there may be other laws being broken by the action that we are not considering here, these violations are considered misdemeanors and carry penalties of up to 6 months in prison and a $5,000 fine for an individual or a $10,000 fine for an organization under 18 U.S.C. 42. If, however, another law was also broken, the violation could become a felony under 16 U.S.C. 3372, which carries higher penalties. For example, if the owner of a Burmese python in Florida didn't have a permit as required by Florida State law, and that person transported the snake to another State, then the fact that the State law was broken in the process of transporting it across State lines makes it a title 16 violation. Therefore, while it may put as many as a million American citizens in possession of injurious wildlife, none will be in violation of the Lacey Act automatically. Furthermore, unless these people break laws under title 16, they would not be subject to potential felony prosecution under the Lacey Act. Hobbyists' current activities would not become crimes provided their snakes stayed in-State or were exported directly out of the country from a designated port within their State's borders.

Unintended Consequences

(29) *Comment:* Pet owners will release their snakes and the problem will be worse. The Lacey Act will do nothing to help the problem; if anything, it would have an adverse effect on the environment. Snake breeders who had been fully responsible beforehand may release their now worthless investments into the wild in retaliation of the rule change. Caring snake owners that cannot move across State lines with their beloved pets may instead release them as a means of avoiding forced euthanasia. The trust of responsible snake owners would be debilitated, and a large portion of snake owners deliberately becoming irresponsible poses a much larger risk than a few isolated irresponsible owners.

Our Response: Many commenters stated that responsible owners would release or euthanize their snakes if this rule passed. We do not believe that this would be the case since pet owners will still be allowed to keep their snakes and sell or give them away within their State. We have posted some suggestions on *http://www.regulations.gov* at the time the proposed rule was published on March 12, 2010 (see separate file ''Questions and Answers''), for how to find a home for a snake that a person can no longer keep. Please see our response to Comment 12, where they are repeated.

With social networking so available on the Internet, a person moving to another State could possibly find a reptile enthusiast in their current State to adopt the pet. When the person moved to the new State, the person could contact reptile enthusiasts in the new State to see if any snakes were available for adopting. While that is not the same as keeping the same snake, it does present a responsible alternative.

We believe that most people will choose to keep their snakes and also, of those owners who can't because they are moving to another State or similar situation, they have options as presented above. While some misinformed pet owners or breeders might release their snakes, we do not believe that this will be widespread. The Service believes that the potential illegal conduct of a few irresponsible pet owners should not cause us to refrain from listing species that we have determined to be injurious.

(30) *Comment:* This rule will create a lucrative black market in the trade of these nine species that will cost billions in tax dollars to enforce. Ultimately the animals will suffer. There will always be unscrupulous dealers who will take advantage of prohibition.

Our Response: The commenter provides no supporting evidence that a black market will be created. Therefore, we assume that the commenter is basing the statement on historical events with other species. We do not know if a black market will be created. We agree that there will always be unscrupulous dealers who will take advantage of people. However, we believe that the pet owners prefer to be law-abiding citizens and would find legal ways of dealing with new situations. We should note that this comment, as all others, was based on the proposed rule with nine species of constrictor snakes.

(31) *Comment:* This rule will cause airlines to embargo snakes. They will refuse to transport them.

Our Response: We hope that this rule does not influence airlines to implement an unnecessary embargo on transporting snakes within the injurious wildlife provisions of the Lacey Act (that is, intrastate or with a permit). It is our understanding that, unrelated to this rule or any injurious wildlife listing, there are some carriers that have declined to transport live animals or specific dangerous animals. Shippers with the appropriate Federal permits, specifying how the animals should be transported in escape-proof containers, should be able to find a carrier.

Environmental Threat

(32) *Comment:* The peer-reviewed research (''Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor'') quantified the ecological risk that nine species of large constrictor snakes pose to the United States, looking at both the probability that the snakes would become established and the resulting consequences. Burmese pythons will eat a wide variety of reptiles, birds, and mammals of all sizes, and can deplete vulnerable species.

Our Response: We agree that there is an environmental threat to native species in the United States, including the territories and possessions. We have explained this threat in our Environmental Assessment and in the sections *''Potential Impacts to Native Species (Including Threatened and Endangered Species''* for each species above). We concur that this threat is part of the justification for listing the four species as injurious.

(33) *Comment:* The Burmese python invasion is an ecological calamity in progress. It is directly undermining the multibillion-dollar, nationally supported Everglades restoration project because the monitoring and success of that project are tied to measures of native wildlife ''indicator'' populations, which are now being consumed and reduced by these human-introduced predators. Had the Service considered the risk of the Burmese python under its Lacey Act listing authority 20 years ago, the agency might have prevented this invasion.

Our Response: The South Florida Water Management District petitioned us to list the Burmese python in 2006 because the species was undermining their Everglades restoration effort. We agree that, if we had listed the species 20 years ago, the current problem might have been averted. This evidence gives further support to list the other three species of large constrictor snakes before this situation happens with other species or with Burmese pythons in other parts of the country.

Political Pressure

(34) *Comment:* Politics is running the process. This entire movement is driven by animal rights extremists with deep pockets and a political agenda, and not science and reason. It is designed to end the trade in nonnative wildlife.

Our Response: We disagree that politics is involved in this determination. We received a petition from the South Florida Water Management District in 2006 to list the Burmese python. They were concerned about the ecological danger posed by Burmese pythons to the health of the Everglades. In our effort to address this petition, we realized that other species of large constrictors were becoming increasingly commonly found in Florida, and, therefore, we expanded our evaluation to include other species. The Service has been criticized in the past for being too late in listing species as injurious. We took a proactive approach to prevent future problems.

The regulatory process to list the four species was guided by biologists. We received peer-reviewed scientific documentation (the risk assessment) from a separate bureau (see Response to Comment 35 on USGS politics). We also received comments from five independent peer reviewers on the proposed rule and supporting documents. This rule is an action to regulate the importation and interstate transport of four species of large constrictor snakes that have been found to be injurious. Much of the trade in these species of snakes can continue legally (except where States have their own prohibiting laws). We received tens of thousands of comments from both animal rights supporters and pet trade supporters. We considered the comments of all submitters equally.

(35) *Comment:* It is not hard to understand why the USGS and biologists would be strongly interested in seeing more species added to the Injurious Wildlife List. They have decades of experience getting funding for injurious snake research; they are expert at it. Because of this history and the fiscal incentives involved, there exists a tangible potential for bias, impropriety, and a lack of impartiality. Due to the obvious possibility of conflict of interest and bias, the USGS should have recused itself from the contract and funding to create this report. So far, the USGS ''report'' provides the only scientific evidence (if one can actually call it scientific) that would justify any Federal regulatory action regarding these nine tropical snake species.

Our Response: The Service, the National Park Service, and the USGS carefully segregated their roles in this rulemaking process so that policy objectives did not bias scientific results. USGS does not undertake any regulatory efforts associated with injurious wildlife so that it may concentrate specifically on the science of the issues. The Service and the National Park Service contracted with USGS to prepare the report on risk assessment because of USGS's extensive expertise on the subject. Part of this expertise comes from their similar work on brown tree snakes, listed by Congress as injurious in 1990. The risk assessment on the constrictor snakes provided an extensive review of the literature of the species, and while this information was used by the risk assessment authors to provide measures of risk on each species, the extensive literature review was also used separately by the biologists who wrote the rule. Therefore, the rule and the risk assessment were developed from independent scientific papers from authors all around the world.

In addition, the peer reviewers of the proposed rule and supporting documents state that the rule is scientifically justified and an appropriate step to protect native wildlife in the United States from the risks posed by the nine large constrictor snakes. The 2011 USGS document entitled ''Challenges in Identifying Sites Climatically Matched to the Native Ranges of Animal Invaders'' also underwent peer review before it was published. Please see also Comment 67 on the USGS peer review process.

(36) *Comment:* The rule was steered by the USGS.

Our Response: The USGS's role was to prepare one of the supporting documents (''Giant Constrictors: Biological and Management Profiles and

an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor''). The rule was written by the Service, using the risk assessment document for its excellent summaries of the biology of the four species, as well as for its assessment of the risks. However, the Service uses the criteria set forth by the Aquatic Nuisance Species Task Force (ANSTF 1996) to determine risks and its own injurious wildlife evaluation criteria to determine which species should be listed. The Service seriously considered each species, using biological information compiled by the USGS risk assessment authors and other available information. Because the risk assessment authors did such a thorough job of comprehensively compiling literature (more than 600 references) on the nine species, we were able to utilize the report extensively for our own injurious wildlife evaluation of the four species in this rule. This compilation of references in one location greatly facilitated our evaluations but should not be construed that USGS influenced our determinations.

Misinterpretation of the Rule

(37) *Comment:* The government does not have the right to ban animals that are so widely kept as pets. It's unconstitutional. It is my constitutional right to be able to express myself and I do that through reptiles.

Our Response: Many commenters believed that the rule will ban possession of the four species of constrictor snakes. This is not true. An injurious wildlife designation prohibits importation into the United States and transport across State lines (including the District of Columbia and U.S. territories and possessions). Pet owners will be allowed to keep their pets, sell them, or give them away within their own State, if allowed by State law. No constitutional rights are being violated.

Confusion With S 373 (Senate Bill 373)

(38) *Comment:* S 373 should (or should not) be enacted.

Our Response: Many commenters cited S 373 as the action they were commenting on. We assume these commenters were referring to Senate bill 373, which was introduced by Senator Bill Nelson of Florida in February 2009. The bill passed a committee vote but received no further action in Congress and was not passed into law. The Service was called to testify at a hearing regarding this bill and to present background information. The bill is a separate but parallel action to the Service's rule to list the constrictor snakes. We can only address comments regarding our specific rule. To ensure their comments on S 373 are heard, the public should submit those comments to their Federal legislators. There are also two companion bills in the House: HR 2811 to ''include constrictor snakes of the species Python genera as an injurious animal,'' and HR 511 to add large constrictors to the ''injurious wildlife'' list under the Lacey Act (title 18 U.S.C. 42(a)(1)).

More Burdens on Service

(39) *Comment:* This proposal will most likely create more burdens on the already taxed Office [Division] of Management Authority and enforcement sections of the Service.

Our Response: Both the Division of Management Authority and the Office of Law Enforcement are fully prepared to handle any increase in work that may result from this rule. We anticipate that the rule will not generate a significantly large increase in permit applications being submitted or increase in inspections at the ports. Currently, the Division of Management Authority receives more than 6,000 applications and issues more than 20,000 permits annually. Based on other listing activities involving species that are traded more frequently than the listed constrictors, the Division of Management Authority anticipates an increase of no more than one or two percent annually.

While the listing of species as injurious that are already widely kept and sold as pets will present unique law enforcement challenges with respect to interstate transport, the interception of injurious wildlife to prevent both entry into the United States and spread of such species once they are in the country constitutes an investigative priority for Service Law Enforcement when such transport represents a threat to U.S. wildlife resources and habitat. The fact that this listing would create additional work for enforcement officers does not outweigh the ecological importance of addressing the problems created by the continued import and interstate transport of these snakes.

(40) *Comment:* Will the Department of the Interior properly fund this rule change when more pressing and immediate crises to the environment are happening?

Our Response: This comment is outside of the scope of the rule. The funding to support this rule change after it takes effect would be in the form of law enforcement and permit processing. Please see our response to Comment 39, which addresses those subjects.

(41) *Comment:* At our zoo, we are concerned that the permit process will be affected by causing a backlog of permit applications.

Our Response: The Service's Division of Management Authority recently conducted an extensive reorganization to specifically address how it is handling its workload. While processing time for any application can vary due to completeness of the application, current workload being handled by the Division, or seasonal variations resulting from climatic factors, the Division is committed to processing any injurious wildlife application in the most timely and efficient manner possible. We anticipate that there would be fewer than 100 applications (if nine species listed) requesting authorization to conduct activities under this rule, and applications would typically be completed within 30 days. Since any permit issued for interstate transport of a listed species is valid for 1 year or more and covers a specific geographic range where activities could occur, we do not anticipate that a 30-day processing time would result in any significant impacts to a zoo's ability to carry out educational work outside their State of operation.

Predecisional Proposed Rule

(42) *Comment:* The proposed rule is predecisional. It is prejudicially constructed and telegraphs a predetermined end.

Our Response: By the nature of a proposed rule (in general for all agencies), the agency publishes what it is proposing to be the regulation. Therefore, all proposed rules indicate the agency's position on a particular situation. A final rule may differ from what an agency proposes, but it may be exactly the same as the proposed rule. The purpose of the proposed rule is to obtain additional information, give the public notice of the proposal, and give the public the opportunity for comment. We review all the comments for new information and evaluation of our proposal, as we did for this rule. In this case, we received no information that changed our evaluation of the four constrictor species. We clearly stated in our proposed rule that ''We are evaluating each of the nine species of constrictor snakes individually and will list only those species that we determine to be injurious.'' Thus, we made it clear that we left it open for us to list fewer than nine species, or none at all, if none was determined to be injurious based on new information. The five other species in the proposed rule (reticulated python, DeSchauensee's anaconda, green anaconda, Beni anaconda, and boa

constrictor) remain under consideration for listing as injurious.

If an agency feels that it could benefit from additional information before proposing a rule, it may publish an advanced notice of proposed rulemaking (a Notice of Inquiry; NOI) to gather more information. The new information is used to develop a proposed rule. We published such a notice on January 31, 2008 (73 FR 5784), from which we received more information to apply to the proposed rule.

(43) *Comment:* The Service failed to make a good faith effort to gather new information.

Our Response: The Service provided ample notice and opportunity to comment on the proposed action. Here are examples of the opportunities provided by the Service to the public and stakeholders:

• The Service published a Notice of Inquiry in the **Federal Register** on January 31, 2008 (73 FR 5784), as an advanced notice of proposed rulemaking. It explained why we were considering listing the genera *Python, Boa,* and *Eunectes* (which included more species than the four that we are listing in this final rule), what information we needed, and how the public could submit information to us. We provided a 90-day comment period (ending April 30, 2008), which is a standard length of time.

• On February 29, 2008, we participated in a panel discussion arranged by the pet industry. Representatives of the Pet Industry Joint Advisory Council (PIJAC) were present. Our representative opened the discussion by stating: ''This Notice of Inquiry is an information gathering process. I really want to stress that this is NOT a proposed rule or action. As part of processing the petition we received to list Burmese pythons as injurious, we opened up this comment period to gather information on especially which species, particularly snakes such as the Burmese python, within these three genera might be a threat to native wildlife and wildlife resources. If there is a snake that has not yet been imported into the United States that might pose a threat to native wildlife, this information would be very useful. By the way, we worked with PIJAC in addressing some of the concerns, and we answered a short set of Q&As with Reptiles Magazine. Please take a look when you get a chance—*http://www.reptilechannel.com/reptile-news/conservation-and-legal/pijac-constrictor-regulations.aspx.*''

• We participated in several chatrooms with stakeholders on *http://www.pethobbyist.com* in February or March 2008.

• The Service was interviewed by PIJAC about the NOI, and the interview was posted by ReptileChannel.com in 2008 (*http://www.reptilechannel.com/reptile-news/conservation-and-legal/pijac-constrictor-regulations.aspx*). The Service explained why we were considering action, what information we were seeking, and how the public could provide their information. This interview is still posted as of this writing. When we were asked ''Why are you also requesting economic information?'' we answered, ''We currently have little information about the value of domestic trade in these species, and it is our responsibility as part of this process to gather a range of information on the species of interest. This includes economic data.''

• The Service was interviewed for a story on the constrictor snake NOI, and the story published in REPTILES magazine (Vol. 16, No. 5; May 2008).

• On March 12, 2010, we published in the **Federal Register** (75 FR 11808) the proposed rule to list nine species of large constrictor snakes, all of which were included in the genera from the NOI, and for which we asked for new information. We provided a 60-day comment period for the public (ending on May 11, 2010), also a standard length of time. We provided the proposed rule, draft economic analysis, draft environmental assessment, and risk assessment to the public on *http://www.regulations.gov.*

• The Service met with the Small Business Administration (SBA) on April 20, 2010, to discuss what information the SBA needed and what we needed. This meeting was within the public comment period for the proposed rule.

• The Service met with SBA on April 21 for a roundtable meeting with pet industry, zoo, and medical research representatives. This meeting was within the public comment period for the proposed rule.

• Because of several requests for an extension of the comment period, we added another 30-day comment period from July 1 to August 2, 2010 (75 FR 38069; July 1, 2010).

• We met with the SBA again on January 13, 2011, to discuss issues raised by SBA during the public comment periods.

In summary, the public has known since January of 2008 that we were considering listing these three genera, or species from them, as injurious. We provided a total of 180 days for receiving public information and comment and participated in several meetings with stakeholders. We believe that we have made a good faith effort to gather information from the public.

Inconsistent Use of Injurious Wildlife Listings

(44) *Comment:* The manner in which the Service has handled invasive species has been inconsistent. For example, in Western Colorado, feral ''wild'' horses and ring-necked pheasants are afforded wildlife protection status. Both are nonindigenous, introduced, or invasive species that compete with endemic species.

Our Response: It is correct that some nonnative species, such as feral (wild) horses and ring-necked pheasants may receive protection under other laws. The protection for wild horses comes from the Wild Free-Roaming Horses and Burros Act of 1971 (Pub. L. 92–195). Congress gave authority to the Secretary of the Interior under this public law to manage and protect wild horses on lands managed by the Bureau of Land Management and the Secretary of the Department of Agriculture for Forest Service lands. As for the pheasants, we agree that pheasants compete with native species. However, it is not correct that the Service affords them protection. In fact, the ring-necked pheasant is specifically not protected under the Migratory Bird Treaty Act and is also exempt from the Wild Bird Conservation Act. Individual States, however, such as Colorado, may provide their own protections under State laws.

Permitting

(45) *Comment:* The Service should support a law for reptiles modeled after the Wild Bird Conservation Act of 1992. Such a law would limit the importation of wild reptiles into the USA while allowing captive breeding of species currently in the United States, and allowing the interstate and international transportation of captive-bred animals.

Our Response: The comment is referring to the Wild Bird Conservation Act of 1992 (WBCA), which allows for obtaining a permit for personal pets under 50 CFR 15.25. The WBCA was enacted on October 23, 1992, to ensure that native populations of exotic bird species are not negatively impacted by international trade to the United States. The Service may issue permits to allow import of listed birds for scientific research, zoological breeding or display, or personal pet purposes when the applicant meets certain criteria (such as a personally owned pet of an individual who is returning to the United States after being continuously out of the country for a minimum of 1 year, except that an individual may not import more

than two exotic birds under this paragraph in any year). The Service was given this authority by Congress. However, the Service does not have a similar authority from Congress under the Lacey Act (18 U.S.C. 42). If, by the words ''support a law,'' the commenter is asking us to write a final rule that includes a permit process for pets, we cannot do that under our current authority. By statute, we can approve permits only for zoological, educational, medical, or scientific purposes.

(46) *Comment:* If the permitting process is not made considerably more efficient and flexible, individuals and institutions engaging in these purposes are likely to be negatively impacted.

Our Response: We agree that the permitting process must be an efficient and effective process to ensure that activities that are allowable under the Act are authorized in a timely manner. The Division of Management Authority, which is responsible for the permitting process under the Act, has recently undergone a significant restructuring and organization. We do not anticipate that the number of permit applications that will be generated due to this listing would be significant. However, we believe that the restructuring of the Division will allow for a more efficient and effective permitting process for all permit applications received by the Division, not only the ones requesting authorization for activities otherwise prohibited under this Act.

Economic Effect

(47) *Comment:* Families dependent on reptile breeding businesses will lose their businesses.

Our Response: Most commenters who claimed an expected loss of business did not explain why this would occur. However, some did explain that they sell one or more of the proposed species mainly or entirely out-of-State or out of the country. Some stated which species they sell, and some did not specify. However, those breeders who specialize in breeding only the species listed by this rule as injurious and who sell mainly or entirely out-of-State or out of the country, we agree that this rule will greatly affect them. However, those breeders who live in the States with designated ports (Alaska, California, Florida, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, New York, Oregon, Tennessee, Texas, and Washington) may continue to export through the designated port in their State, although they may not continue to ship to other States. For those breeders of other reptiles, this rule will not affect them. Those breeders who supply skins of the listed species for the designer clothing industry, such as for boots and belts, will still be able to ship skins across State lines, export them, and import them.

(48) *Comment:* The rule will ruin a $3 billion industry.

Our Response: This comment was based on the proposed rule, and the boa constrictor, reticulated python, and three anaconda species were included in the economic calculations. The commenters did not explain how they arrived at the $3 billion figure. While the Service is not sure of the basis of this dollar amount, this figure was used by USARK in a report to OMB on March 1, 2010: ''The trade in high quality captive-bred reptiles is a $3 billion dollar [*sic*] annual industry. The animals potentially addressed by rule change make up approximately ⅓ of the total dollar value trade annually.'' Another significant dollar figure was identified in an article in ''The Economist'' (Feb. 11, 2010): ''Revenue from the sale of boas and pythons amounts to around $1.6 billion–1.8 billion each year.'' We point out that the category of the ''sale of boas and pythons'' did not specify what species were included, but most likely would include ball pythons, which makes up by far the largest segment (78.6 percent) of the three genera of constrictor snakes that were imported into the United States from 2008 to 2010 (see USFWS Final Economic Analysis 2011) and are a very large segment of the domestic reptile trade. However, the same article in ''The Economist'' states, ''The recession, however, has hurt what used to be a lucrative hobby. Fewer people want to splurge on snakes that cost thousands, if not tens of thousands, of dollars. According to Brian Barczyk, a snake-breeder, demand for ''pet-grade'' snakes, which cost under $50, has sunk even more than demand for ''investment-grade'' ones, because the average person is hesitant to buy a new pet.'' We also note that part of the snake breeding industry is for the sale of snake skins, and this part of the industry should not be affected (dead snakes or parts thereof are not listed as injurious).

We agree that our rule will negatively affect some aspects of the reptile industry, but we have no evidence to suggest that the prohibition on importation and interstate transportation of four species of snakes will cause the ruin of a $3 billion industry or even to the extent of $1.6 billion. On the contrary, our final economic analysis shows the estimated potential annual retail value losses associated with all four listed species, plus the five species for which the decision is deferred, as $14.7 to $30.1 million and a total annual decrease in economic output as $42.0 to $86.2 million.

We brought these high dollar figures of ''The Economist'' and others to the attention of the Small Business Administration on April 20, 2010, and with SBA and the reptile industry (with pet industry, zoo, and medical research representatives) on April 21, 2010, at a roundtable meeting (at which the representative of USARK was present). We specifically asked the reptile industry representatives for information on how the dollar figures were derived. We received no explanation then or after. We do not know if that figure includes other species besides the nine covered in the proposed rule, or if it includes indirect effects. However, we did locate some information on USARK's Web site: ''USARK Reptile Industry Economic Summary for the Office of Management & Budget RE: USFWS Proposed Rule Change to Injurious Wildlife List of the Lacey Act; March 1, 2010.'' This report, available to the public but not directly provided to the Service, itemizes the captive breeding trade, for a total of $1.8 billion. Much of that sum is not specifically for the nine species in the proposed rule. For example, the $240,000 annual equipment sales could easily be used for other nonlisted snake species, or even other reptiles, amphibians, small mammals, or fish. The ''Annual high end animal sales $60 million'' is a separate line item from the ''Present Asset Value of approximately 2 million breeding age animals—$800,000,000.'' It is not clear why these are not included with the breeding age animals.

As stated above, our final economic analysis shows an annual retail value decrease ranging from $14.7 to $30.1 million and an economic output decrease of $42.0 to $86.2 million for the nine species that we proposed to list (USFWS Final Economic Analysis 2011). While this is not insignificant, it is a small fraction of the $1.8 billion cited above. In addition, we note that the importation of constrictor snakes of the genera *Python, Boa,* and *Eunectes* declined steadily from the peak in 2002 (the three genera = 233,705; 9 species = 48,006 snakes) to the low in 2010 (the three genera = 83,940; 9 species = 15,792 snakes; Fig. 1, USFWS Final Economic Analysis 2011). The decline in imports started well before we received the petition in 2006 that initiated our regulatory process. It is unlikely that the reduced imports were due to our impending rule. The decline in imports could be due to decreased availability of captive-bred or wild-

caught snakes in the export countries, the decreased demand in the United States, or the availability of domestically bred species. Thus, the existing decline in importation seems to be unrelated to our regulatory process, and future declines should not necessarily be attributed to the listing of the four species.

Economic Analysis

(49) *Comment:* The rule will have a detrimental economic impact on breeders and hobbyists, food producers, and caging and accessories producers.

Our Response: The Service recognizes that the rule will curtail imports and interstate trade in the four snake species. The supporting documentation accompanying this rule—the final Economic Analysis and the Final Regulatory Flexibility Analysis—estimates the impacts on small businesses, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), and the benefits and costs of the rule, as required by Executive Orders (E.O.) 13563 and 12866. This analysis uses a regional input-output model to determine the impacts on supporting industries, such as snake-related care and food suppliers.

(50) *Comment:* The Service does not possess the information needed to do a credible benefit-cost or regulatory flexibility analysis on rules regarding constrictor snakes.

Our Response: The data needs for conducting a comprehensive analysis of any industry are very intense. Most commenters agreed with our conclusion that there is very little reliable public information available about the snake industry. E.O. 12866 states that ''Each agency shall base its decisions on the best reasonably obtainable economic information'' (Section 1.b.7). The Regulatory Flexibility Act allows that the initial and final regulatory flexibility analyses may contain ''more general descriptive statements if quantification is not practicable or reliable'' (5 U.S.C. 607). We received information during the public comment period that we used to prepare the final economic analysis. While other information was also received, it tended to be anecdotal, describing impacts to a specific firm or individual, which is insufficient to describe industry-wide impacts. However, we used some anecdotal information to better describe how some firms or individuals will be impacted. The Service believes the analysis is based on the best reasonably obtainable information at this time.

(51) *Comment:* The Service ignored information submitted by industry participants and trade associations in response to its 2008 Notice of Inquiry. In addition, the Service misused the information it was provided by respondents to the notice.

Our Response: Industry responses to the 2008 Notice of Inquiry (73 FR 5784; January 31, 2008) were a primary source of information for the economic analysis. Trade association data were the only source for most of the sales and price information in the economic analysis, and the associations are cited repeatedly in the report. The Service sought clarification of the data provided by a trade association with a representative of the association and the consultant who prepared the submission. The additional information obtained from the conversations was applied in the draft economic analysis.

Many industry participants provided anecdotal information about their situation or made quantitative assertions. While informative, we cannot extrapolate anecdotal data about individuals or businesses to describe the industry as a whole. However, in the final economic analysis, some anecdotal information from the public comments is used to better depict potential impacts.

(52) *Comment:* The Service employs baseless assumptions to estimate the information it lacks.

Our Response: Using informed assumptions for reasonable ranges to fill data gaps is a well-recognized economic technique. By applying a range of prices and quantities, the economic analysis derives the approximate scale of retail sales from the partial information available. The analysis is transparent and the assumptions can be easily replaced with more reliable information when it becomes available. Additional information, such as interstate sales from Florida, was received during the most recent public comment period. This information was used to revise the draft economic analysis to more accurately depict the impact to industry. Industry profiles were not submitted during public comment and are not publicly available. Therefore, some assumptions are still necessary in the economic analysis.

(53) *Comment:* The economic analysis ignores wholesalers, transporters, and vendors of food and ancillary equipment.

Our Response: The economic analysis includes an input-output analysis that takes into account all of the industries that contribute to delivering the product to the consumer. Wholesalers and equipment used in the production of snakes for sale are included in the input-output analysis based on retail sales. Shipping cost information on individual sales has been obtained since the availability of the draft economic analysis. This information was used to revise the economic analysis.

(54) *Comment:* The Service also ignores pricing premiums for snakes, particularly for color morphs, dwarfs, *etc.*

Our Response: The aggregate information available and provided by the trade associations was insufficient to segment the market for different classes of snake for the draft economic analysis. The knowledge that ''pricing premiums reach up to 60 times the price of a 'normal' snake,'' (PIJAC, 8/2/2010, FWS–R9–FHC–2008–0015–4531.1, page 4) suggests that there are at least two market segments for a species—one for 'normal' snakes and one for high-end collectible snakes. We received additional pricing information that more accurately depicts pricing premiums, and we used it in the revised economic analysis.

(55) *Comment:* The Initial Regulatory Flexibility Analysis (IRFA) underestimates the economic impact on small entities.

Our Response: We revised the IRFA to incorporate new information submitted during the course of the public comment period.

(56) *Comment:* The IRFA does not discuss significant alternatives.

Our Response: The subject of this proposed rule is adding species to the list of injurious species under the Lacey Act, at 50 CFR 16.15. Management of feral snake populations is a much broader topic that the Service is vigorously pursuing but that is not within the purview of this rulemaking. Therefore, the alternatives considered in the environmental assessment are the only relevant choices.

(57) *Comment:* The draft economic analysis fails to quantify the benefits of the proposed rule.

Our Response: The benefits of the rule include both avoided costs of extirpating feral snake populations and maintained ecological services from areas that might have been harmed by released snakes. There is little information available about either of these sources that would allow the quantification of benefits. OMB Circular A–4, guidance for implementing E.O. 12866, recognizes that benefits are rarely fully quantified and recommends a qualitative discussion of the sources of benefits. We added this discussion to the Final Economic Analysis.

(58) *Comment:* The draft economic analysis lacks clarity in its exposition.

Our Response: The draft economic analysis made available with the proposed rule published in the **Federal**

Register (75 FR 11808; March 12, 2010) is only a small précis of a much larger study. Per public comments received, the Service has added additional clarification to the Final Economic Analysis. Please refer to the full revised final economic analysis and regulatory flexibility analysis, which are available in the docket for this rule (at *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015).

Biological

(59) *Comment:* With the exception of predation by a *Python molurus bivittatus* on endangered Key Largo woodrats (*Neotoma floridana smalli*), there is no evidence of significant adverse environmental, human health, or economic impacts by these feral populations.

Our Response: We found ample occurrences of adverse effects by pythons. Burmese pythons are large generalist predators that consume a wide variety of vertebrates in their native range. Examination of the stomach contents of Burmese pythons from in and around Everglades National Park has yielded 455 prey items composed of 340 mammals, 107 birds, 8 crocodilians, and one unidentified sample. These prey items included 60 individual round-tailed muskrats (*Neofiber alleni*), a native species that researchers and National Park Service biologists have not observed in Everglades National Park for years and worry may be becoming extirpated.

In congressional testimony, Dr. Frank Mazzotti, University of Florida, reported on declines in marsh rabbit abundance and round-tailed muskrats. He stated, ''In Everglades National Park the presence of pythons has been related to the absence of marsh rabbits and Florida muskrats. We are very concerned about impacts of pythons on Everglades fauna, and the difficulties involved in removing a large cryptic predator from a large expansive wetland wilderness area'' (Mazzotti 2010).

In addition, two federally endangered species, the Key Largo woodrat and the wood stork (*Mycteria americana*), have been found in Burmese python stomach samples. The limpkin (*Aramus guarauna*) and white ibis (*Eudocimus albus*), which are State-listed species of special concern in Florida, have also been identified in stomach contents of Burmese pythons. Dove *et al.* (2011) found 25 species of birds representing 9 avian orders from remains in digestive tracts of 85 Burmese pythons (*Python molurus bivittatus*) collected in Everglades National Park; this included the federally endangered wood stork and 4 species of State concern.

Based upon what we know of the diet of Burmese pythons and other large constrictor snakes in their native ranges and in Florida, we believe that federally protected species, such as the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), Florida panther (*Felis concolor coryi*), and American crocodile (*Crocodylus acutus*) are at risk of predation by these constrictors. Reed and Rodda (2009) lists a total of 64 State-listed threatened or endangered species at risk from Burmese pythons or other giant constrictors in Florida. Please read the response to comment number 65 below for economic costs (impacts).

(60) *Comment:* The majority of these species have never been documented as being introduced into new environments. Despite having been detected in the vicinity of the Everglades since the 1970s, Burmese pythons are still limited to that general area.

Our Response: Of the four species addressed in this rule, one is not yet reported in trade and another is involved in trade in very minor amounts. Thus, their listing is intended to prevent their establishment in the wild through escapes or releases. The remaining species, the Burmese python, is clearly established in southern Florida and has been observed in the wild in 15 Florida counties and several other States with suitable climates for its establishment. Although individual pythons had been regularly observed in the Everglades region since the mid-1990s, it was not until 2006 that a reproducing population was documented to be present there. By that time, the population had become well established over a sizeable area.

(61) *Comment:* The Burmese python population in south Florida was significantly reduced by the 2009–2010 winter cold weather.

Our Response: The comment is referring to two combined issues. One is the fact that snakes are ectothermic (cold-blooded), meaning that their body temperature adjusts to be approximately what the surrounding air temperature is. Thus, when the air temperature falls, a snake's body temperature drops—unlike humans, who maintain a nearly constant body temperature. This biologic effect is true for native snakes as well as the large constrictor snakes.

The second issue is the record cold temperatures during January of 2010. In fact, according to NOAA National Weather Service from Miami, January 2 to 13, 2010, was the coldest 12-day period since 1940 or earlier (NOAA 2010). A record was set for 12 straight days with the temperature at or below 45 °F (7.2 °C). Other minimum temperatures were broken. It has been 70 years since there were such sustained low temperatures.

We explain here why the observation that most of the large constrictors perished from the January 2010 unusually cold weather event in South Florida is misleading and speculative. In the months since that unusual cold-weather event, hundreds of adults and 24 Burmese python hatchlings were found alive and captured in Everglades National Park. During 2010, 322 Burmese live or recently dead pythons were captured or removed from in and around Everglades National Park, of which 67 were removed from October 18 to December 31, 2010, which is many months after the cold spell ended. The number of Burmese pythons found dead in 2010 (322) is only a 10 percent reduction from numbers removed in 2009 (367 total). A multi-agency effort is under way to survey for and capture the Northern African python, another of the constrictor snake species proposed for listing as injurious that is now established west of Miami, before its range expands farther up the Florida peninsula.

Reliable population estimates of any of the large constrictor snake species in south Florida before the cold temperatures occurred are nonexistent, and scientists do not have any population estimates since the cold spell. Therefore, it will be difficult to judge the demographic impact of the cold temperatures. Subjectively, the freeze appears to have had a greater effect on pythons in the shallow marsh habitats, where underground and deep water refuge was absent. It is known that pythons can seek locations such as underground burrows, deep water such as in canals, or similar microhabitats to escape the cold temperatures. In a study conducted in the Everglades, nine of ten radio-tracked snakes in shallow marsh habitat perished either from the cold temperatures or from complications experienced as a consequence of the cold (individuals were removed from the wild at that point, which may have induced additional stress). However, many live snakes were observed while conducting walking surveys for the radio-tracked snakes. These snakes were apparently able to maintain body temperatures using microhabitat features of the landscape (Mazzotti *et al.,* 2010).

Large numbers of Burmese pythons in the heart of the Everglades survived, as evidenced by a mating aggregation of four adults found in March 2010 and several large adults found in April 2010. A gravid (pregnant) female northern

African python was captured in the Bird Drive Basin Recharge area west of Miami in January 2010 immediately after the freeze. This snake was captured only after an unprecedented mass effort of more than 50 searchers looking for her as she escaped repeatedly into a deepwater canal. Later (December 2010 to January 2011) multi-agency efforts led to the capture of several Northern African pythons. Thus, the large constrictors of several species continue to be present and to breed in south Florida. Surveys will be conducted in the next several years to begin quantifying the distribution and abundance of the population, but in the absence of comparable statistics from before the cold temperatures, assessments of the cold weather impacts will only be indirect and will involve considerable speculation. Despite the record cold, we know that many pythons and boas survived. If thermoregulatory behavior or tolerance to cold is genetically based, we would expect large constrictor snake populations to persist, rebound, and possibly increase their genetic fitness and temperature tolerance as a result of natural selection pressures resulting from the unusually cold weather conditions in south Florida in January 2010.

(62) *Comment:* There is no scientific information indicating that large body size increases the likelihood that a species will become invasive. In fact, the opposite is likely the case since large-bodied animals are more readily evident and thus more likely to be removed from the environment before they can establish a viable population.

Our Response: The list of traits shared by the giant constrictors includes many of the traits that either increase the severity of their probable ecological impacts or exacerbate the challenge of controlling or eradicating them. The cryptic coloration of these snakes is a common form of camouflage where the snake is similar to its surroundings, making them very difficult to detect and be removed from the environment. Burmese pythons have established viable populations partly because they are hard to detect, have high reproductivity, and occupy a variety of habitat types. Thus, in comparison to potential invaders lacking these traits, this group of snakes constitutes a particularly high risk. A large body size would be a disadvantage for an animal whose size sets it off from its surrounding environment, such as a bear, which stands 1–1.2 m (3–4 ft) above ground level. Even the largest constrictors extend only a foot above ground level, easily concealed by ground vegetation. A large body size would also be a disadvantage for predators that hunt actively on a regular basis, because they would stand out more. Neither of these situations is true for the large constrictors, which are primarily sit-and-wait predators and which move along very low to the ground. These attributes, combined with the fact that these snakes have no similar ecological equivalents in the United States with respect to size of prey items they can consume, will make them a novel predator on naïve wildlife that may otherwise not even have native predators (such as Florida panther).

(63) *Comment:* Which of the nine species of constrictor snakes are definitely reproducing in the wild in the United States?

Our Response: Of the four large constrictor snakes included in this final rule, those confirmed breeding in the wild in the United States or its territories include the Burmese python and the Northern African python.

The Burmese python has been captured in many areas in Florida. In South Florida, more than 1,334 live and dead Burmese pythons, including gravid (pregnant) females, have been removed from in and around Everglades National Park in the last 10 years by authorized agents, park staff, and park partners, indicating that they are already established.

Evidence of reproduction for Northern African python in the area known as the Bird Drive Basin Recharge Area west of Miami includes multiple size classes of adult snakes of both sexes, at least 3 reproductive females, two hatchlings in 2009, and a freshly shed skin from a hatchling in 2010 plus recent captures also in the Bird Drive basin (December 2010 to January 2011) indicating survival after the cold weather in 2009 to 2010. These observations represent overwhelming evidence for an established reproducing population of *Python sebae* in Florida (Reed *et al.,* 2010). Please see the final environmental assessment for the current status of verified observations, removals, and establishment of the large constrictor snakes in the wild from the USGS collection information in the United States and insular territories, and the Early Detection and Distribution Mapping System, University of Georgia, in Florida.

(64) *Comment:* Neither the State nor the Federal Government has made substantial investments in strategic programs for the eradication or control of Burmese python on the lands they manage. In South Florida, the cost of eradication of the Burmese python has been relatively small.

Our Response: The Fish and Wildlife Service (Service), in partnership with many different organizations, has organized and facilitated several multi-stakeholder workshops to address the threats posed by pythons and help prioritize and coordinate management efforts. Goals for python management include preventing their spread, eradication in select local areas, a public awareness campaign focusing on responsible pet ownership, and overall reduction or containment of invasive snake populations.

Currently, a number of activities are being conducted by various agencies and entities under limited budgets (that is, National Park Service (Everglades National Park), the Service, U.S. Department of Agriculture, South Florida Water Management District, U.S. Geological Survey, Florida Fish and Wildlife Conservation Commission, University of Florida, county governments, nongovernmental organizations, and others) to reduce the potential of the population increasing or spreading further. These actions include but are not limited to, capture and removal; public education and awareness; spatial ecology and movement studies using radio telemetry, satellite and GPS technology; diet (stomach content analysis); thermal biology (implanted data loggers); trap development and trials; impacts analysis; pilot studies: genetics, salinity tolerance; and potential use of unmanned aerial vehicles with thermal infrared cameras to detect pythons in the field.

The Service has spent $604,656 over a 3-year period (2007 to 2009) to design python traps, deploy and maintain them, and educate the public in the Florida Keys to prevent the potential extinction of the endangered Key Largo woodrat at Crocodile Lake National Wildlife Refuge. The South Florida Water Management District has spent $334,000 between 2005 and 2009 and anticipates spending an additional $156,600 on research, salaries, and vehicles in the next several years. An additional $300,000 will go for the assistance of the U.S. Department of Agriculture's Wildlife Services, the animal damage control arm of USDA (part of USDA Animal and Plant Health Inspection Service). The USDA Wildlife Research Center (Gainesville, Florida, Field Station) has spent $15,800 in 2008–2009 on salaries, travel, and supplies. The USGS, in conjunction with the University of Florida, has spent more than $1.5 million on research; radio telemetry; and the development, testing, and implementation of constrictor-snake traps. Miami-Dade

County Parks and Recreation Department, Natural Areas Management and Department of Environmental Resources Management have spent $60,875 annually on constrictor snake issues. The National Park Service has spent $317,000 annually on various programs related to constrictor snake issues in the Everglades National Park. All these expenditures total $5.7 million from 2005 to approximately 2012, or roughly an average of $720,000 per year. Many people have also volunteered their time to search for and capture snakes when funding was not available.

Although the agencies mentioned above would prefer to eradicate these invasive snakes, they recognize that eradication is unlikely. As explained in the ''*Control''* section of Factors That Reduce or Remove Injuriousness for Burmese Python, Kraus (2009) found no examples of local populations of reptiles that had been successfully eradicated.

(65) *Comment:* The most effective and least costly methods would focus on preventing establishment of any potentially invasive species and would include early detection and rapid response (EDRR). Eradication of established populations is very rarely effective and always costly.

Our Response: We agree that EDRR programs can be of benefit once prevention options have been exhausted or proven to be ineffective. Sometimes considered the ''second line of defense'' after prevention, EDRR is a critical component of any effective invasive species management program. When new invasive species infestations are detected, a prompt and coordinated containment and eradication response can reduce environmental and economic impacts. This action results in lower cost and less resource damage than implementing a long-term control program after the species is established. Early detection of new infestations requires vigilance and regular monitoring of the managed area and surrounding ecosystem. An EDRR system will provide an important second line of defense against invasive animals that will work in concert with Federal efforts to prevent unwanted introductions such as an injurious wildlife listing under the Lacey Act. Prevention is why two of these large constrictor snakes not yet found to be reproducing in the United States or territories are included in this final rule.

(66) *Comment:* Two papers published in the journal *Biological Invasions,* one by USDA wildlife researchers and another authored by scientists at several research institutions including the University of Florida, have concluded that Burmese pythons can't survive for any length of time outside south Florida unless they have the ability to find appropriate burrows or cavities to allow hibernation for several months during the winter. Given that this snake is primarily a tropical and subtropical species, it may not have evolved the behavior or physiology to successfully hibernate.

Our Response: The winter of January 2010 was one of the coldest on record in southern Florida. Burmese pythons were documented to tolerate these conditions. In the USDA study (Avery *et al.* 2010), two of nine (22 percent) of the Burmese pythons survived the cold spell. This study was conducted in Gainesville, Florida, 400 km (248.5 mi) north of the known range where they are currently reproducing; this region of Florida also experienced record cold weather. The Mazzotti *et al.* (2010) study, which was conducted within the Everglades region, found that 1 of 10 telemetered Burmese pythons survived (10 percent) and 59 of 99 (60 percent) of nontelemetered pythons survived. Subsequently there have been sightings and recent removals of Burmese pythons and Northern African pythons in south Florida, including a mating aggregation of Burmese pythons with one gravid female and four males (Snow 2010). Therefore, despite the coldest winter on record since at least the 1940s (NOAA 2010), south Florida still has reproducing populations of nonnative large constrictor snakes. While the abundance of pythons clearly declined during this record cold winter, the population has recovered rapidly in south Florida, where the average female reaches reproductive maturity within 3 years and can subsequently produce more than 30 (but up to 107) eggs per clutch annually or biennially (Harvey *et al.* 2008).

Dorcas *et al.* (2011) published another study in *Biological Invasions.* They relocated 10 Burmese pythons from the Everglades to an outdoor research setting in South Carolina. The following January, they all died. However, they had not had a chance to acclimate to a milder winter before getting hit with record cold. Dorcas *et al.* (2011) concluded: ''Some pythons in our study were able to withstand long periods of considerably colder weather than is typical for South Florida, suggesting that some snakes currently inhabiting Florida could survive typical winters in areas of the southeastern United States more temperate than the region currently inhabited by pythons. Moreover, our results are specific to translocated pythons from southern Florida. Burmese pythons originating from more temperate localities within their native range may be more tolerant of cold temperatures and would presumably be more likely to successfully become established in temperate areas of North America. The susceptibility to cold we observed may reflect a tropical origin of the Florida pythons or acclimatization of snakes to warm southern Florida winters early in life.'' Given the climate flexibility exhibited by the Burmese python in its native range (as analyzed through USGS' climate-matching predictions in the United States), we would expect new generations within the leading edge of the population's nonnative range to become increasingly adaptable and able to expand to colder climates.

(67) *Comment:* The ''Reed and Rodda Report'' was only subject to an internal review process. Any policy changes or legislation that will have an effect on the freedoms of American citizens should be based on sound scientific evidence as well as the merit of a true scientific peer review process.

Our Response: Dr. Susan Haseltine, Associate Director for Biology, USGS, responded to a press release issued by a reptile-trade organization and an accompanying letter by a group of veterinarians and other scientists regarding the USGS peer review process. She said, ''The USGS provides unbiased, objective scientific information upon which other entities may base judgments. To ensure objectivity, independent scientific review is required of every USGS publication. Standards require a minimum of two reviews, and adequacy of the author's responses to reviews is assessed by both research managers and independent scientists within the USGS. The authors went well beyond the requirements by soliciting reviews from 20 reviewers (18 of them external to the USGS). Reviewers comprised a large portion of the global expertise on both the biology of giant constrictor snakes and the management of invasive snakes.''

The USGS follows mandatory fundamental science practices for peer review, which can be read at the following Internet site: *http://www.usgs.gov/usgs-manual/500/502-3.html.* This policy establishes the requirements for peer review of USGS information products and applies to all USGS scientific and technical information, whether it is published by the USGS or an outside entity.

Other

(68) *Comment:* The Service has not thoroughly considered the full implications of the rule regarding effects on the pet industry.

Our Response: We understand that the implications of this rule are complex. We have endeavored to consider the need to list the four species as injurious, as well as alternatives using the best available information. Please see ''Alternatives to Listing'' below for an explanation of the alternatives that we considered. We have also made every effort to consider all of the indirect effects.

(69) *Comment:* Because the addition of any species to the Lacey Act results in the nationwide ban of that species, a nationwide impact study should be performed.

Our Response: As explained above, this rule does not create a nationwide ban. The commenter did not explain what type of nationwide impact study should be performed. We did, in fact, develop two nationwide impact studies, an economic analysis and an environmental assessment, drafts of which we posted on *http://www.regulations.gov* on March 12, 2010, with the proposed rule, and final versions of which are also available at *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015. We used the best available information and we believe these impact studies are sufficient. We are not required to do additional surveys ourselves, because our standard is to use the best available information. We believe we made a good-faith effort to locate information (see also response to Comment 43).

(70) *Comment:* We requested a 90-day extension of the comment period for the proposed rule to provide our members much needed time to provide comments, data, and analysis that will be instrumental to the Service's final decision.

Our Response: We received several requests for an extension of the public comment period for up to 90 days. We granted an additional 30 days to the existing 60 days, for a total of 90 days for the proposed rule's comment period. We believe that amount of time was sufficient, even for a complex rule, considering we were seeking similar information to that for the 2008 notice of inquiry (73 FR 5784; January 31, 2008) and that for the second comment period ended on August 2, 2010—nearly 90 days after the first comment period ended.

(71) *Comment:* One commenter referred to a memo written in 2007 by a former Service Assistant Director and Chief of Law Enforcement. The comment quoted the memo, ''The injurious species provisions of the Lacey Act were clearly not designed to deal with a species that is already a significant part of the pet trade in the United States'' and ''It could, however, make a felon out of a reptile enthusiast in Wisconsin who sells one python to an individual in Minnesota.'' The commenter stated that the Service has not made a case for the rule.

Our Response: The memo that the commenter referred to was an information memorandum to the Service's Director regarding the petition to list the Burmese python from the South Florida Water Management District in 2006. The memo described various options that the Service and others could consider. The statements quoted by the commenter are verbatim. However, at the time the memo was written, the USGS risk assessment (Reed and Rodda 2009) had not yet been completed. No decision had been made by the Service at the time of the memo. The Service's memo acknowledges, ''We expect to have the risk assessment—an essential first step in any evaluation for injurious designation—completed in approximately one year.'' That was, however, an underestimation of the time it would take to prepare such a thorough document and have it extensively peer-reviewed. Once that risk assessment was completed, it became clear that all nine species should be evaluated by the Service for possible listing as injurious.

The memo's statement, ''The injurious species provisions of the Lacey Act were clearly not designed to deal with a species that is already a significant part of the pet trade in the United States'' is true in that the pet trade was not established to the degree it is today when the Lacey Act was passed by Congress in 1900. That does not, however, mean that the injurious species provisions cannot be an effective tool in invasive species management. The reason that the four species are being listed is that there are still vulnerable parts of the country where the listing of each of the species may prevent their establishment. In addition, three of the species are not currently a significant part of the constrictor pet trade, and the fourth species (Burmese python) comprises only 2.6 percent of total constrictor snake imports (for the genera *Python, Boa,* and *Eunectes*) for 2008 to 2010. Therefore, taking the proactive step to list them as injurious species now will reduce the likelihood that their numbers will increase in the United States and pose a risk to native wildlife in the future.

As for the comment from the memo, ''It could, however, make a felon out of a reptile enthusiast in Wisconsin who sells one python to an individual in Minnesota,'' that statement was also quoted correctly and is correct under certain situations. However, those situations are more representative of worst-case scenarios. There are a variety of other laws that are often violated when people engage in illegal wildlife trafficking, some of which are Federal felonies. However, a stand-alone violation of the interstate transport or import prohibitions under 18 U.S.C. 42 is a misdemeanor, not a felony. Please also see our response to Comment (28) for an explanation of the misdemeanor and felony violations.

Alternatives to Listing

(72) *Comment:* This is a summary of the alternatives suggested through the public comment process. Where noted, they are explained further in the text of the rule above.

A. List some or all of the nine species, but:

1. Exempt color and pattern genetic mutations of these snakes from the listing as albinos, leucistics, *etc.*

Our Response: The commenter explains that albinos and leucistic (having reduced pigmentation) snakes have a far lesser chance of survival in any wild environment. Not listing these color and pattern mutations would have a smaller financial impact on the industry and no financial impact on the government. The commenter may be correct that such color variations may have a lesser chance of survival in the wild. However, the survival differential is unknown, so we have determined that all color variations are at least the same risk to the welfare of wildlife or wildlife resources of the United States. Furthermore, if snakes escape to the wild, their offspring may not have the same obvious color pattern and may perpetuate normally patterned populations given gene dominance, expression, and mutation.

2. Exempt hybrids.

Our Response: We realize that hybrids often are worth significantly more money than the parent species separately. Allowing hybrids would preserve more of the income of some breeders. However, we have determined that hybrids are at least the same risk as the parent species are to the welfare of wildlife or wildlife resources of the United States. The Wildlife Society commented, ''Hybrids between two invasive species are also invasive themselves and must be listed as injurious along with the exotic parental species. Hybrids maintain many of the characteristics of the parent species; this means that hybrids will retain an ability to reach the large sizes and continue the voracious dietary habits of the parental species, and they will cause as much damage to native threatened and

endangered species and the environment as pure species ancestors. Many closely related constrictor species are known to hybridize, and it is likely that many of the invasive constrictors noted in the proposed rule have this same ability. Some hybrid combinations may result in sterile offspring, however, some do remain fertile, which several reptile breeders themselves attest to on their Web sites (*i.e., http://www.highendherps.com*). Furthermore, each individual snake still has the capability of causing extensive damage within its lifetime. One potentially destructive invasive species is the African rock python (*Python sebae*), which has been captured in the wild west of Miami, Florida. In its native range, this snake can reach lengths up to 20 feet, and it is known to attack humans and farm animals. While this snake has the potential to cause serious damage, it also poses an additional threat because of its ability to hybridize successfully with Burmese pythons (*Python molurus*), a species which has already established a sizable and growing population in Florida.''

3. Do not list the species *Boa constrictor.*

Our Response: We have not listed the species at this time. We will address this comment when we publish a determination of whether this species should be listed as injurious.

4. List regionally only where there is a climate match.

Our Response: Creating this type of geographical restriction or exemption (or both) under the Lacey Act would make enforcement of the regulations by the Federal Government, in cooperation with the affected States, virtually impossible.

The authority to list regionally is unclear and untested. Moreover, it would create a host of law enforcement complications.

5. Allow for the interstate travel for captive-bred animals.

Our Response: Please see our response to Comment (45).

6. Remove the status of the Port of Miami as an agricultural port and a port of entry. Move the port of entry north, maybe to one of the New England ports where the weather will eradicate anything that would be lost or illegally released.

Our Response: This alternative is beyond the scope of this rulemaking. Furthermore, it is outside the authority of the Service. In addition, it is highly impractical. While Miami is the port with the most imports of the nine species of large constrictor snakes in the proposed rule (75.4 percent from 1999 to 2007 and 86.7 percent from 2008 to 2010; USFWS Final Economic Analysis 2011), two other warm-weather southern ports (Los Angeles and Dallas-Fort Worth) also received imports of thousands of some or all of the nine species. These three ports account for 98 percent of all imports of the nine species. Los Angeles and Dallas are within the climate match range of the Burmese python. For the four species now being listed, the number of imports are fewer.

7. The Service should consider paying restitution to or compensating these people for their losses, by buying the animals and the businesses that will no longer exist, suddenly made worthless, at fair market value, and then debating the question on how to dispose of those animals.

Our Response: This rule does not affect people's ability to own, possess, or transport snakes within States, if allowed by State law. Neither the Service nor the Department of the Interior has programs or authorities to compensate people for losses that may be related to this injurious wildlife listing. The Service can work with the affected States and industry, and offer technical assistance to provide environmentally risk-free approaches to disposing of constrictor snakes that businesses or pet owners are no longer able to keep. Please also see our response to Comment 12 where we provide options for people to dispose of snakes responsibly.

B. Do not list any of the species. Instead:

8. Let the States regulate their own captive wildlife, such as following FWC's comprehensive approach in Florida.

Our Response: Please see our response to Comment (18).

9. Allow the industry to self-regulate and educate with the Internet, *etc.;* United States Association of Reptile Keepers best management practices; State and local risk assessment industry best management practices (BMPs) as suggested by Dr. Frank Mazzotti; and Habitattitude™.

Our Response: We fully support all of these suggestions and look forward to working with all entities that endorse them. However, they are voluntary actions and there is no guarantee that people will cooperate. These efforts have been available for many years, and while they are useful in many cases, we believe that both voluntary and regulatory actions are necessary to safeguard our ecosystems with more assurance.

10. Issue permits and registrations, require microchipping, apply severe fines and criminal charges, *etc.,* for the miskeeping or release of these animals in any State.

Our Response: These alternatives do have potential for preventing accidental and intentional escapes. However, the Service does not have the authority to issue permits for pets or for any use of injurious species other than for medical, zoological, educational, or scientific purposes.

C. PIJAC offered to discuss options with the Service in detail including developing a comprehensive, State-led prevention and early detection and rapid response program.

Our Response: Industry and State partnerships are very important to the Service and Department of the Interior in our efforts to manage invasive species. As examples, the Department signed a Memorandum of Understanding with PIJAC in 2009 to create public awareness—through such public campaigns as Habitattitude™—about the threat of invasive species and to promote responsible pet ownership practices to prevent the accidental or intentional release of invasive species by pet owners. The Service also partners with States to develop a national aquatic invasive species program, and we support many State management actions through cost-share grants for implementation of State Aquatic Nuisance Species Management Plans. These partnerships with industry and States are essential aspects of managing the invasive species problem facing the nation. Also important is the Federal Government's authority to regulate importation and interstate transport of species found to be injurious wildlife under 18 U.S.C. 42. This authority is one important aspect of an overall national strategy to reduce the risks from introduction and spread of harmful nonnative species (Lodge *et al.* 2006).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

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

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

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

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

Executive Order 12866 Regulatory Planning and Review (U.S. Office of Management and Budget 1993) and a subsequent document, Economic Analysis of Federal Regulations under Executive Order 12866 (U.S. Office of Management and Budget 1996), identify guidelines or ''best practices'' for the economic analysis of Federal regulations. With respect to the regulation under consideration, an analysis that comports with the Circular A–4 would include a full description and estimation of the economic benefits and costs associated with implementation of the regulation. These benefits and costs would be measured by the net change in consumer and producer surplus due to the regulation. Both producer and consumer surplus reflect opportunity cost as they measure what people would be willing to forego (pay) in order to obtain a particular good or service. ''Producers' surplus is the difference between the amount a producer is paid for a unit of good and the minimum amount the producer would accept to supply that unit. Consumers' surplus is the difference between what a consumer pays for a unit of a good and the maximum amount the consumer would be willing to pay for that unit (U.S. Office of Management and Budget 1996, section C–1).''

Large constrictor snakes are commonly kept as pets in U.S. households, displayed by zoological institutions, used for science and research, and used as educational tools. Because none of the four species listed by this rule is native to the United States, the species are obtained by importing or breeding in captivity. We provided a draft economic analysis to the public at the time the proposed rule was published (on *http://www.regulations.gov* at Docket No. FWS–R9–FHC–2008–0015) and offered two public comment periods totaling 90 days. Using the comments we received on the draft economic analysis and new information we acquired, we revised the economic analysis and provided the final version on *http://www.regulations.gov* at Docket No. FWS–R9–FHC–2008–0015. We provide a summary here.

In the context of the regulation under consideration, the economic effects to three groups would be addressed: (1) Producers; (2) consumers; and (3) society. With the prohibition of imports and interstate shipping, producers, breeders, and suppliers would be affected in several ways. Depending on the characteristics of a given business (such as what portion of their sales depends on out-of-State sales or imports), sales revenue would be reduced or eliminated, thus decreasing total producer surplus compared to the situation without the regulation. Consumers (pet owners or potential pet owners) would be affected by having a more limited choice of constrictor snakes or, in cases where species were not available within their State, no choice at all if out-of-State sales are prohibited. Consequently, total consumer surplus would decrease compared to the situation without the regulation. Certain segments of society may value knowing that the risk to natural areas and other potential impacts from constrictor snake populations is reduced by implementing the regulation. In this case, consumer surplus would increase compared to the situation without the regulation. If comprehensive information were available on these different types of producer and consumer surplus, a comparison of benefits and costs would be relatively straightforward. However, information is not currently available on these values so a quantitative comparison of benefits and costs is not possible.

The data currently available is limited to the number of constrictor snake imports each year, the estimated number of constrictor snakes bred in the United States, and a range of retail prices for each constrictor snake species. Using data for the three genera *Python, Boa,* and *Eunectes,* we provide the value of the foregone snakes sold as a rough approximation for the social cost of this final rulemaking. We provide qualitative discussion on the potential benefits of this rulemaking. In addition, we used an input-output model in an attempt to estimate the secondary or multiplier effects of this rulemaking—job impacts, job income impacts, and tax revenue impacts (discussed below).

With this rule, the importation and interstate transport of four species of large constrictor snakes (Burmese python, Northern African python, Southern African python, and yellow anaconda) will be prohibited from importation and interstate transport, except as specifically permitted. The annual retail value losses as a result of this rule are estimated to range from $3.7 million to $7.6 million.

The broad indicator of the economic impacts of the alternatives, economic output or aggregate sales, includes three types of effects: direct, indirect, and induced. The direct effects are the changes in annual retail value due to the implementation of a given alternative. ''Indirect effects result from changes in sales for suppliers to the directly affected businesses (including trade and services at the retail, wholesale and producer levels. Induced effects are associated with further shifts in spending on food, clothing, shelter and other consumer goods and services, as a consequence of the change in workers and payroll of directly and indirectly affected businesses'' (Weisbrod and Weisbrod 1997). The indirect and induced effects represent any multiplier effects due to the loss of revenue. These cost estimates include the various potential scenarios we considered.

Businesses or individuals shipping listed species across State lines could face penalties for Lacey Act violations. The penalty for a Lacey Act violation is not more than 6 months in prison and not more than a $5,000 fine for an individual, and not more than a $10,000 fine for an organization.

Under this final rule, the probability of large constrictor snakes establishing populations outside of their current U.S. locations should decrease compared to the no action alternative. The change in probability is unknown.

Alternatives Considered

The draft economic analysis considered two other alternatives, in addition to listing all (Alternative 2) or none (Alternative 1) of the nine species under consideration. Alternative 3 would list the seven species known to be in trade in the United States (that is, all but the Beni and DeSchauensee's anacondas). Alternative 4 would list the five species judged to have a high ''overall risk potential'' in the USGS evaluation (Reed and Rodda 2009), while excluding the four species judged to have a medium overall risk potential (that is, the two nontraded species, plus the green anaconda and reticulated python).

For the final economic analysis, we split Alternative 2 into 2A (the nine species proposed for listing) and 2B (the four species addressed in this final rule). This allows the Service to move forward with the listing of four species, while the other five remain under consideration.

Compared to the alternative of listing all nine species (2A), Alternative 3 would have no effect on current sales revenues or indirect economic impacts from the loss of such revenues, since there are currently no sales revenues from these two species. It would, however, allow consumers to substitute these two species (in addition to the many other substitute species already available) for the purchase of the prohibited species, thus reducing

economic impacts to the degree that there would be substitute purchases of these two species. However, the possibility of substitute purchases is itself a potential problem in that the two currently nontraded species are so similar in appearance to the green and yellow anacondas that it would be difficult for enforcement officials to distinguish green or yellow anacondas that were mislabeled as Beni or DeSchauensee's anacondas. In addition, acting to prevent the importation of these two species before trade in them emerges means that environmental injury from them can be prevented, which is far more effective than waiting until after injury has already occurred to act to limit it.

Alternative 4 (listing only the five species determined to have a high ''overall risk potential'' in Reed and Rodda (2009)) would limit the rule to the species with the greatest potential for environmental injury. Of the four species that would not be listed under this alternative, two are not currently in trade in the United States, and one (the green anaconda) is in very limited trade (less than half a percent of imported constrictor snakes of the genera *Python, Boa,* and *Eunectes*). Of the four that would not be listed, only the reticulated python is the subject of noticeable trade, and that is less than 4 percent of imported constrictor snakes of the genera *Python, Boa,* and *Eunectes.* The economic impact of the five-species alternative (Alternative 4) would be less than the nine-proposed-species alternative (2A) primarily because of the exclusion of the reticulated python; less than the seven species in Alternative 3, primarily because of the exclusion of the reticulated python; but greater than the four species in Alternative 2B, primarily because the boa constrictor is included. The relative level of risk associated with each species is determined by the criteria specified in the section Lacey Act Evaluation Criteria above. Even in the case of those species with medium risk, the particular areas where the climate match occurs are notable for the number of endangered species found there (*e.g.,* Hawaii, southern Florida, and Puerto Rico). That fact, the potential that yellow anacondas would be difficult for enforcement officials to distinguish if mislabeled as DeSchauensee's anacondas, and the fact that the opportunity to act preventively before most of these species became established would be lost under this alternative, and all of these factors argued against its adoption.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. A Final Regulatory Flexibility Analysis, which we briefly summarize below, was prepared to accompany this rule. See **ADDRESSES** or *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015 for the complete document.

This rule lists four constrictor snake species: (Burmese python, Northern African python, Southern African python, and yellow anaconda) as injurious species under the Lacey Act. Entities impacted by the listing would include: (1) Companies importing live snakes, gametes, viable eggs, and hybrids; (2) companies (breeders and wholesalers) with interstate sales of live snakes, gametes, viable eggs, and hybrids (3) entities selling reptile-related products and services (pet stores, veterinarians, and shipping companies); and (4) research organizations, zoos, and educational operations. Importation of the four constrictor snakes would be eliminated, except as specifically authorized. Impacts to entities breeding or selling these snakes domestically would depend on the amount of interstate sales within the constrictor snake market. Impacts also are dependent upon whether or not consumers would substitute the purchase of an animal that is not listed, which would thereby reduce economic impacts.

For businesses importing any of the four large constrictor snakes in this final rule, the maximum impact of this rulemaking would result in 14 to 19 small businesses (20 percent) having a reduction in their retail sales of 3 percent.

In addition to companies that import snakes, entities that breed and sell large constrictor snakes will also be impacted. These entities include distributors, retailers, breeders and hobbyists, and exhibitors and trade shows. We do not know the total number of businesses, large or small, that sell or breed the listed four species domestically. However, we know approximately the number of businesses that sell or breed large constrictor snake species of the genera *Python, Boa,* and *Eunectes* and that overall, the nine listed species originally proposed represent 58 percent of all U.S.-bred large constrictor snake sales of those three genera. Because we do not know exactly how many businesses sell the listed species, we extrapolated the percentage of sales to determine the number of affected businesses. Thus, we assume that 16 to 22 percent of businesses sell or breed the four snake species in this final rule and that approximately 62 to 85 percent of these entities would qualify as small businesses. Therefore, approximately 979 to 2,874 small businesses would be affected. Impacts to this group of businesses as a whole could represent a 16 to 22 percent reduction in retail value.

In addition to snake sales, ancillary and support services comprise part of the snake industry. Four major categories include: (1) Food suppliers (such as for frozen or live rats and mice), (2) equipment suppliers (such as for cages, containers, lights, and other nonfood items), (3) veterinary care and other health-related items, and (4) shipping companies. The decrease in constrictor-snake-industry economic output and related employment from baseline conditions is $10.7 to 21.8 million for the four species. This estimate includes impacts to the support service businesses. The number of businesses that provide these services to the large constrictor snake market is unreported. Thus, we do not know the impact to these types of individual businesses.

Under the final rule, the interstate transport of the four constrictor snakes will be discontinued, except as specifically permitted. Thus, any revenue that would be potentially earned from this portion of the business will be eliminated. The amount of sales impacted is completely dependent on the percentage of interstate transport. That is, the impact depends on where businesses are located and where their customers are located.

Therefore, this final rule may have a significant economic effect on a small number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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. Would not have an annual effect on the economy of $100 million or more. According to the final economic analysis (USFWS 2011), the annual retail value losses for the four constrictor snake species in this final rule are estimated to range from $3.7 million to $7.6 million. In addition, businesses would also face the risk of fines if caught transporting these constrictor snakes, gametes, viable eggs, or hybrids across State lines. The penalty for a Lacey Act violation under the injurious wildlife provisions is not more than 6 months in prison and not more than a $5,000 fine for an individual and not more than a $10,000 fine for an organization.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Businesses breeding or selling the listed snakes would be able to substitute other species and maintain business by seeking unusual morphologic forms in other snakes. Some businesses, however, may close. We do not have data for the potential substitutions and therefore, we do not know the number of businesses that may close.

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

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), the rule does not have significant takings implications. A takings implication assessment is not required. This rule would not impose significant requirements or limitations on private property use. Any person who possesses one or more snakes from the four species can continue to possess, sell, or transport them within their State boundaries.

Federalism

In accordance with E.O. 13132 (Federalism), this rule does not have Federalism implications. This rule would not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not have substantial direct effects on States because it: (1) Imposes no affirmative obligations on any State, (2) preempts no State law, (3) does not limit the policymaking discretion of the States, (4) requires no State to expend any funds, and (5) imposes no compliance costs on any State. Executive Order 13132 requires Federal agencies to proceed cautiously when there are ''uncertainties regarding the constitutional or statutory authority of the national government,'' but there are no such uncertainties here. The statutory authority of the Fish and Wildlife Service to designate injurious species pursuant to the Lacey Act is clear, and the constitutional basis for the Lacey Act (a statute that has been in effect since 1900) is equally clear, limited as it is to the regulation of international and interstate commerce. The Executive Order also encourages early consultation with State and local officials, which the Service has done. Indeed, this rulemaking was initiated by petition from an agency of the State of Florida. Therefore, in accordance with Executive Order 13132, we determine that this rule does not have Federalism implications or preempt State law, and therefore a Federalism summary impact statement is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has approved the information collection requirements associated with the required permits and assigned OMB Control No. 1018–0093. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Departmental Manual in 516 DM. This action is being taken to protect the natural resources of the United States. A final Environmental Assessment and a Finding of No Significant Impact (FONSI) have been prepared and are available for review by written request (see **ADDRESSES**) or at *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015. The final environmental assessment was based on the nine proposed species of snakes and revised based on comments from peer reviewers and the public. By adding Burmese python, Northern African python, Southern African python, and yellow anaconda to the list of injurious wildlife, we intend to prevent their new introduction, further introduction, and establishment into natural areas of the United States to protect native wildlife species, the survival and welfare of wildlife and wildlife resources, and the health and welfare of human beings. If we did not list these constrictor snakes as injurious, the species are more likely to expand in captivity in States where they are not already found in the wild; this would increase the risk of their escape or intentional release and establishment in new areas, which would likely threaten native fish and wildlife, and humans. Burmese pythons and Northern African pythons are established in southern Florida. Releases of the four constrictor snakes into natural areas of the United States are likely to occur again, and the species are likely to become established in additional U.S. natural areas such as national wildlife refuges and parks, threatening native fish and wildlife populations and ecosystem form,

function, and structure. The reticulated python, green anaconda, Beni anaconda, DeSchauensee's anaconda, and boa constrictor remain under consideration for listing.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of three live python species and one live anaconda species, gametes, viable eggs, or hybrids. We are unaware of trade in these species by tribes.

Effects on Energy

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references used in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R9–FHC–2008–0015.

Authors

The primary authors of this rule are the staff members of the South Florida Ecological Services Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service proposes to amend part 16, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

■ 2. Amend § 16.15 by revising paragraph (a) to read as follows:

§ 16.15 Importation of live reptiles or their eggs.

(a) The importation, transportation, or acquisition of any live specimen, gamete, viable egg, or hybrid of the species listed in this paragraph is prohibited except as provided under the terms and conditions set forth in § 16.22:

(1) *Boiga irregularis* (brown tree snake).

(2) *Python molurus* (including *P. molurus molurus* (Indian python) and *P. molurus bivittatus* (Burmese python).

(3) *Python sebae* (Northern African python or African rock python).

(4) *Python natalensis* (Southern African python or African rock python).

(5) *Eunectes notaeus* (yellow anaconda).

* * * * *

Dated: January 10, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–1155 Filed 1–18–12; 4:15 pm]

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National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the ''Sergeant Matthew J. Fenton Post Office''. (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the ''M.D. Anderson Plaza'' and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the ''Sergeant Angel Mendez Post Office''. (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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